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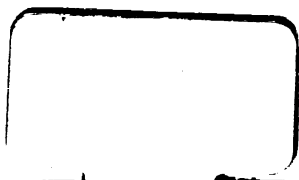
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THE LAW CHRONICLE

ETC.

Course of Law Studies.

WE have frequently stated our opinion that it is impossible to furnish a plan or course of study which shall be suitable for every student, inasmuch as what may be proper to one may not be so for another person. To give a perfect plan is therefore out of the question; but the next best thing would be to publish the various courses of study which have been framed by different persons, and we propose to do this at some future time, but as this will demand much space and time, we propose to furnish here a *short* course of study adapted to articled clerks who are looking forward to the examinations, and shall endeavour to make it as practical and useful as possible.

In this course we enter not into the questions concerning Latin, logic, commonplacing, &c., but assume that the student is only anxious to acquire a knowledge of his profession in the best and easiest manner possible. Of course, one who has had a good preliminary training and disciplining will be better able to profit by his reading than if he had not had those advantages, but it by no means follows that he will be superior to others who have not the same acquirements; for nature frequently more than counterbalances by her gifts the deficiencies arising from the want of a regular course of study. Some preliminary remarks on the examinations, conduct in the office, and study, will, however, be proper, even in this short course.

The increasing strictness, or rather reality, of the examination before admission as an attorney or solicitor, demands of every student, at this moment, his most serious consideration of how far his acquirement of law is proportionate to the time elapsed since his entering into articles of clerkship. To students in town, the proximity of the scene where certain gentlemen have had the misfortune, instead of passing their examination, to be

recommended a little further study, and their nearness, in point of time, to their own examination, are likely to afford a stimulus to increased exertion; but to those at a distance, and those who have more time before them, these examples come home with less force, and it is to be feared that the danger is only properly appreciated when in every sense near at hand. What changes may take place in the mode or degree of examination, before each one of our readers may undergo the ordeal, is quite uncertain; but of this one thing he may feel perfectly satisfied, *viz.*, that the examination will not be less severe than it is at present.

With moderate study and attention during articles, and a moderate capacity, undoubtedly the student may generally expect to pass, under the present state of the examinations; but it must be remembered that the number of examiners each year, who have zeal and industry to do more than barely pass, or who have pride enough to be so prepared as to leave no doubt of their passing, is more likely to increase than diminish. As the present class of questions are found to be more easily or generally answered than heretofore, the examiners are likely to raise the standard of average answers which shall be considered passable.

It is now becoming more the custom for attorneys to take some pains in assisting their articulated clerks to pursue a proper course of reading, and now and then to explain a few points of law or practice; but still it is to be feared, in offices of large business particularly, that the frequency and sufficiency of this advice and explanation will depend almost entirely upon the student.

There is no part of the conduct of the young articulated clerk which more requires that judgment, discrimination, and courtesy, which his previous gentlemanly education affords him, than that which relates to the time and manner of asking for information and explanation of his principal. To break in upon the attorney in the middle of some difficult or intricate matter of business, upon which his ideas at the moment are concentrated—to occupy his time for the purpose of asking trivial abstract questions, which the student with a little consideration would answer himself—to put points of law without object, or so badly, from want of consideration beforehand, as to make it difficult to ascertain the meaning—or to ask strings of questions suggested at the moment by mere impulse of curiosity, and which are too numerous for the answers to be remembered, is not likely to be borne with very great patience.

To those (if any there be) who would *knowingly* do such things, anything which we could urge would be utterly useless; but let nothing approaching to such conduct occur by any oversight—let it be remembered that the amount of assistance which the student may gain from his principal will depend upon the time and manner in which it is sought.

For explanation of difficulties met with in reading, perhaps the morning, as soon as business commences, will be in general the most convenient hour, and the book containing the passage required to be explained should invariably be produced.

With regard to instruction upon difficulties in practice, or on points of law, care should in general be taken by the pupil to exhaust his own resources of information in endeavouring to instruct himself, and when these have failed, or left him in a state of doubt, then he will at least have acquired a tolerably accurate idea of the exact nature of his difficulty, and be able to state his question in such a clear and technical manner as shall convince his instructor that it is not inconsiderately asked, and that the answer will not be thrown away.

It is impossible to lay down any arbitrary rules with regard to the proper time for seeking these explanations; that must be left to the sense of propriety which good breeding furnishes, and which will soon teach him what is most agreeable to his principal, and convenient with regard to the business of the office. With these cautions against giving unnecessary trouble, and causing inconvenience or disgust, which cannot be too well remembered, we must, however, call upon the student not to be discouraged by any coldness of reception which he may at first encounter, for this may arise from ignorance, in the principal, of the earnest and genuine purpose of instruction which urges the application. A respectful perseverance will soon convince the attorney (and the conviction cannot be disagreeable) that his clerk is at least anxious to render himself more competent for the business of the office, and it is a matter of far too serious moment with the latter, to allow any feeling of mere bashfulness, or *mauvaise honte*, to affect his conduct.

With every desire to avoid digressions and to come to details, we yet feel that there will be an eventual saving of time if we here indicate a little more fully our views with respect to the mode in which the student should conduct and follow up his reading. It is of the utmost importance that he should not confound the extent of his reading with that of his acquisitions—not take it for granted that if he reads many pages *per diem* he is necessarily making progress. If not able to obtain assistance of the solicitor to whom he is articulated, as before referred to, it would be well if the student could discuss each day's reading with a fellow-student or any other intelligent person. But in default of this, which is probably attainable by few, care should be taken to meditate on what has been read, and to put questions on the more important subjects, so as to bring into operation intellect, for few persons seem to be aware how little the mind is exercised about the matters of which they are reading. No real progress can be made until the fatal habit of taking everything for granted is got rid of—until reading ceases to be a mere mechanical operation. The reader should demand of himself the reason or grounds of any proposition, and should particularly mark whether the answer is founded on principles deducible from the law itself—*i. e.*, the common law, or is the result of positive legislation, and in each case the limitation or extent of the doctrine. Thus, let it be assumed that it is stated that one partner in a trade may bind his co-partners by bills or notes issued in the name of the firm; it would be desirable to ask on what grounds does this proposition depend? The

necessity of this will be apparent when it is found also stated in the books, that the bill or note must be given during the currency of the partnership or prior to notice of any dissolution *inter vivos*. The reason why a partner is bound by a bill or note issued by his co-partner in the name of the firm is that for the purpose of carrying on the trade conveniently, bills or notes are necessary, and that each partner in such a firm becomes, by the formation of the partnership an *agent*, and has, therefore, the powers of an agent. On the dissolution of a partnership, the agency is revoked, and after notice of the dissolution a partner can no longer bind the firm, though until notice, persons who have dealt with the firm have a right to consider the agency as subsisting. But now notice the limitations or extent of the above proposition: it extends only to *trading* firms, and not, therefore, to professional partnerships (*Hasleham v. Yo.*, 5 Q. B. 883). The proposition contains the words "*inter vivos*" and, therefore, we are not authorised to apply the doctrine of notice to the case of a partner *dying*; by his death the agency is determined, such being the known incident applicable to all devolved authorities. "A mere agency determines, *ipso facto*, by the death of the principal" (2 St. C. 65, 4th ed.).

Again, it is said that one partner cannot bind the firm by deed, at least not so as to cast a new burthen on it, unless a power to execute the deed be given by the partnership or some other deed. Why not? Because a deed is not requisite to enable a trade to be carried on, and, therefore, no agency for such purpose arises from the existence of the partnership. But notice the limitations: 1. To cast a new burthen on the firm; which admits that the release of a debt or a debtor's composition-deed may be executed by one partner (*Gow*, Partn. 60, 3rd ed.); 2. Unless the power be given by the partnership or some other deed; which excludes powers given by articles or documents not under seal. Why? Because a power or authority to execute a deed must be given by an instrument of an equal degree (*Selw. N. P.* 1140, 11th ed.).

Again, it is said that where goods leased, as furniture with a house, have been wrongfully taken on an execution, the landlord cannot maintain *trover* against the sheriff during the continuance of the lease. Why not? Because, in order to recover in an action of *trover*, the plaintiff must show that he has a right to the immediate possession of the goods; and in the case above put, it is the lessee who has the right during the currency of the lease (see *Gordon v. Ha.*, 7 T. R. 9; *Selw. N. P.* 1364; 7 Bac. Abr. 799; 9 Jur. 599; *Rosc. Ev.* 525, 5th ed.) The question will then arise, whether any other remedy could be had, in which the rule as to possession would not arise. The action of *detinue* will suggest itself, but it is laid down that plaintiff must have the right to immediate possession of the goods at the time of the action being brought (*Broom's Pract.* 546; *Selw. N. P.* 668, 11th ed.), which excludes the remedy. The reader will then consider the other forms of action, such as on the case (being a reversioner, for the consequential damage, *Attersoll v. St.*, 1 Tau. 190; *Broom's Pract.* 545), money had and received, &c., and will extend his inquiries as to whether,

if there be no remedy by the lessor against the sheriff, there may not be one against the tenant, or one by a tenant against the sheriff.

Again, a contract cannot be assigned at law, so as to give the assignee a right to sue in his own name. Bills and notes are contracts, and yet it is every day's practice to assign them. Why? Because, in the case of bills, the custom of merchants has been allowed, for the convenience of commerce, to introduce an exception; the exception as to notes did not arise from the same cause, but is the result of legislative enactment (F. Bk. 127; Selw. N. P. 400, 11th ed.; 3 & 4 Anne, c. 8; 11 Jur. 967). Bills of lading were formerly assignable only so as to pass the goods, and not the right of action; for no right of action can, as a general rule, be assigned at law. But now bills of lading may be enforced by the assignees in their own names; but this is by statute (18 & 19 V. c. 140; 2 L. C. 122; F. Bk. 9; 2 St. C. 48, 4th ed.)

We might easily contrive to adduce examples, and to supply explanations, but this would take up too much space, and, besides, is not consonant with our present object. The great point for the reader, is to seize the spirit of our remarks, and to proceed in a somewhat similar manner with the propositions he may meet in his reading. We know that some will object, that such a process is *too slow*; it may be, that a less number of pages may be read *per diem*, but we are certain, that in the long run the reader will find he has made more real progress than he could possibly have done without such a proceeding. When a student has once obtained exact information of the reasons and limitations of a proposition, he is not likely to forget such proposition, and will then be able to apply it with exactitude, which is the only real basis of knowledge.

If we should be addressing one who has not yet entered upon the study of the law, and is, therefore, unacquainted with its many doctrines and nice distinctions, we would recommend him, especially if not greatly gifted, to commence with some short and tolerable plain work. By this means he will obtain a notion of the different topics to which he will hereafter be obliged to direct his attention, and, at the same time, be able to see something of their connexion. It is very encouraging to the student to find that there is a prospect of his being able to accomplish this within a reasonable time and without an extraordinary degree of labour. It is usual to recommend Blackstone's Commentaries as the first book. Now, we conceive this is not judicious advice, especially for the sort of student we are supposing our observations to be addressed. We venture to think that the four volumes of that work, placed in the hands of a youthful student, are apt to discourage him even at the first sight, and when he enters upon the study of them this feeling will rather grow than diminish. The truth is, that Blackstone is not a *first* book, except under very favourable circumstances, as a previous good training, great powers of mental digestion, and much industry. It is very difficult to keep up the connexion of the subjects when extended through so many pages, much less to grasp and retain the propositions enunciated in the various chapters. Indeed, if a commencement be made with Blackstone, it will be well to pursue the plan of Dr. Johnson in

his perusal of new works—namely, to read them first very cursorily, and with a view to trace the connexion of the subjects, leaving for a second reading a more careful examination of the matter of each chapter.

The remarks made with reference to Blackstone's Commentaries apply to all the full editions, including Stephen's Commentaries. And this leads us to observe that if the student will have one of the full editions of Blackstone, he should by all means purchase that by Mr. Serjeant Stephen, which is much superior to the others, and almost merits to be called a new work altogether. The last edition appeared in 1858, and was edited by the Serjeant's son, Mr. James Stephen. The price (£4 4s.), no doubt, seems large compared with some other editions, but the additional money will be well applied.

Before proceeding further, we think it will be useful to repeat some observations we published so long as fifteen years ago, and these will serve to show that our views are not formed with reference to any works of our own which we may hereafter recommend, and at the same time the reader will be benefitted by attending to the observations respecting the mode of study:—

“Of equal importance to the selection of proper books is the knowledge of what the student may expect to attain by each step he is about to take in the course pointed out to him.

“To know, beforehand, of what particular service each branch of his labour may be, and how far and in what manner it may be expected to advance him on his journey, is to obtain at once that great stimulus to exertion, an interesting object in view, without which reading will be comparatively unprofitable; and, for the want of which many zealous and industrious aspirants after legal fame, have, at the very threshold of the law, had their young energies damped or altogether extinguished.

“The student begins with contemplating what appears to him a very formidable array of bulky volumes, which are to form his future studies; he has courage, however, and resolves to fight a good fight, taking it for granted that as he has read upon other literary and scientific subjects, and understood tolerably what he was about, that he will have no great difficulty in comprehending all that is set down for his perusal in the study of the law. But he has not made his first progress through Blackstone with a law dictionary at his elbow, without arriving at the mortifying conclusion that he has not only an immense amount of reading before him, but that he will have to labour through it all with the feeling that scarce one half of the words and sentences which impress themselves upon his weary eye ever reach the understanding, and that still fewer are stored in the memory.

“It may be said that there needs no ghost to tell us there are difficulties in the study of the law; true—but the precise nature of those difficulties being once ascertained and admitted, the remedy suggests itself, and is easily applied. Although every mind differs in some respect from any other, and thus what forms a difficulty to one, student is none to another, yet all the obstacles in the way of early progress are reducible to this one great head—namely, ‘the just appreciation by the student of each portion

of his labour, and the proper expectations with which it is undertaken.' This is the universal difficulty differing with the instances only in degree. In other studies the scholar gradually feels his way; he is encouraged by the consciousness of his own improvement from the beginning; but in the law there are dark and desert regions to be passed, with scarce a glimmering ray of hope or sense of progress to enliven the path. In the study of the law, the great discouragement is the want of some interesting and appreciable object distinctly in view in the early stages of our progress, and the consciousness of its acquirement. It is possible for the student himself to supply this desideratum, he may learn to make a just estimate of the value and probable result of each portion of the labour upon which he is engaged, but in this he ought to be assisted by the practitioner.

"His first rule should be not to harass his mind in the beginning, by attempting too critical or nice a comprehension of what he reads; and secondly, that he should receive the ideas conveyed to his understanding with a reservation for subsequent correction; thirdly, that as in the course of his studies he finds occasion to correct his former notions, and discriminate between instances and cases which before seemed to be homogeneous, instead of desponding, and supposing his previous reading, therefore, to have been useless, he should learn to consider these the only sure tests of his own advancement in knowledge; instead of labouring perpetually under the apprehension, that because he is continually correcting his former impressions, he is making little or no progress, or not so great a progress as others, let him be convinced, we repeat, that these corrections are the sure evidences of his success. As the great mental faculty called into operation in the study of the law is the power of distinguishing the real differences of cases, so as to know to which principle and rule of law each may belong, it follows almost as a corollary that the more we learn, the more we have to except and distinguish from our first rude impressions of general principles. It generally happens that whilst the law student is reading elementary works, he is also practically engaged in the minor parts of the business of an attorney's office, or counsel's chambers, and it is impossible for him for some time to understand the why and the wherefore of all that he sees and does; but he must not neglect his steady course of reading for the sake of hunting up with too great inquisitiveness an explanation for all that comes within his observation in the hours of practice.

Let him at first seek such explanations by way of relaxation, and as auxiliary only to his regular study, with a care not to follow them so far as to confuse or weary himself. The principal benefit derived from such researches, at first, is not so much an increased knowledge of points of law as of books; and there is nothing of greater importance to the student than an early acquirement of a general knowledge of law books, or a facility of at once laying his hand upon the best authority upon any particular branch or point of law. He should be gradually attaining this knowledge of books and authorities by occasional searches for explanation of points occurring in practice, whilst he is steadily following a fixed course of reading; but for some length of time he must be very cautious how he allows himself to

believe that he has laid in much store of information, which will not require subsequent correction.

"By and bye, he has acquired some general ideas of the meaning of the terms of technical language, his reading ceases to be quite such ploughing work as before, and he does not stick at each word for a recollection of its individual sense, and then proceed by a slow process or combination to ascertain the meaning of the whole sentence.

"Still, at this stage, you can hardly call the study very interesting; the labour for the production of each grain of knowledge is too great; and the genuineness of the treasure, when obtained, is too uncertain to give the scale the pleasureable preponderance. But let the student only have faith and believe that in this manner he is so disciplining his mind, so arming his memory, and acquiring such habits of patient inquiry, that shortly he will be almost suddenly astonished by the realisation of all his hopes.

"He will now read with a mind so familiarised with the technical language, in which alone legal ideas can be concisely expressed, that the contrast of his present facility with his past difficulty will be a constant spring of pleasure, and henceforward as he ventures to swim into the deeper waters of the law, and plunges into more abstruse writings, his delight will be increased beyond measure, to find that his powers of apprehension have become quickened and improved in proportion to the growing difficulty of his subject. He now begins to be sensible of acquiring permanent knowledge of the law; he has issued from the state of mere preparation, and has a comparatively flowery path before him.

"Like a well-trained wrestler, confident in his prowess, he feels prepared for the encounter, and now, more than ever, will he be tempted to spend too much time in deciding points of law by minute investigation, to the neglect of that steadfast course of systematic reading which arranges the information he acquires into order in the mind, and gives regularity and consistency to ideas which would otherwise be but a confused and useless mass.

"Instead of passing over difficulties met with in reading, as at first recommended in some degree to be done, the very reverse must now be the student's rule; he should be careful that every position of his author is most thoroughly and minutely understood; the marginal references now cease to be a dead letter, he must make himself acquainted with the authorities upon which the writer founds his assertions; and when the text is obscure, and the question intricate, or the cases cited apparently of insufficient or indirect authority, then let him be as curious as the antiquarian in his researches—let him dive into the very thoughts of the judges, in the examination of their decisions, and trace back to the furthest records of the black letter, or law French and Latin, if necessary, the rise and progress of the principles upon which the points in question may appear to depend. Let it be remembered how the present system of our laws has grown up with the increasing civilization, commerce, and wealth of the people, and the complication of their social relations; how one decision of the courts, in the olden time, has formed a root from which has sprung

other decisions, making branches; and others, again, in modern times, forming the twigs and foliage of a goodly tree, whose noble stem is the unbending principle observed throughout, and deducible by the student from all this series of decisions.

"Whatever changes the legislature may effect, there is one spirit which pervades and ever will pervade the whole law, because the composition of the statutes is more or less the work of experienced lawyers imbued with that spirit, who are employed to carry out the designs of the projectors, and the reduction of the Acts of Parliament to practise is the province of the Courts whose very atmosphere is saturated with the same spirit; to imbibe which spirit as much as possible is, therefore, most important to the clear comprehension of the law.

"Another point for the attention of the student at this time is to endeavour to take a comprehensive view of every work he may read. Let him consider well what relation its subject bears to other branches of law or equity, and disdain not to read the preface and the analysis (if there be one) and make himself master of the author's general view, and mode of dividing and treating the subject before he begins to read the book.

"It constantly happens that whole arguments, read with a correct idea of the object and scope of the work, may be clear and instructive, which, if perused with an imperfect conception of the particular branch of investigation in hand, will not merely be a waste of time, but lead to the most dangerous mistakes and confusion."

Notices of New Books.

LUMLEY'S NEW SANITARY LAWS.

The New Sanitary Laws; namely, the Public Health Act, 1848, the Public Health Act, 1858, and the Local Government Act, 1858, an Introduction, Notes, and Index,—and an Appendix containing the various statutes, referred to therein, and those which are incorporated therewith. By W. G. LUMLEY, Esq., Barrister-at-Law, and Assistant Secretary to the Poor Law Board. 10s. London: Shaw & Sons

Whatever cause of complaint may formerly have existed with respect to the want of legislation for local matters, there can be no doubt that Parliament has now made some atonement, and we are inclined to think that the complaint is now just the other way, for really, the provisions of some of the recent acts relating to sanitary affairs extend to very minute matters. We are not, therefore, so much surprised, that some persons have taken alarm at the invasion of their rights to indulge in nastiness, and have lustily inveighed against the intrusion of "centralizing powers," and taken to admiring the simplicity and excellence of the old common law system. Two of the most important legislative enactments are, the Public Health

Act, 1848, which has now been in operation sufficiently long to enable persons to form some judgment on its utility, and the recent act, called the Local Government Act, 1858. The aim of Mr. Lumley's work is to furnish the professional man with the provisions of these two statutes, with notes thereon, containing the decisions which have been reported, and in addition, which is no small matter, to bring together the various statutes referred to by the two principal acts, and those incorporated therewith. The result is a volume of great utility, and which, indeed, must be considered as indispensable to those practitioners who are engaged in local matters, and also to others who may incidentally require to know the provisions of the statutes. In truth, it is hard to say who may not find the book useful, since so many provisions may give rise, from time to time, to litigation. Our readers will not expect us to furnish any lengthened extracts from Mr. Lumley's work, but we are tempted to give the following from his "Introduction":—

"In 1848, the act now termed the Public Health Act, was passed. The important provision of that measure was the establishment of the General Board of Health, which was composed of the first commissioner for the time being of her Majesty's woods and forests, and two other persons to be appointed by her Majesty. Of these the first commissioner was to be the president, and one of the others was to receive a salary. This board, supplied with a secretary and clerks, was intrusted with the superintendence of the execution of the act. It was to originate, and in some respects to control, all the proceedings under it. But the commission was only temporary, its duration being limited to five years.

"By another act of the same session, 11 & 12 V. c. 123, passed to provide against the calamity of the cholera above alluded to, the General Board, of Health, thus constituted, was required, upon the issue of orders from the Privy Council, to make and issue directions and regulations to prevent or remedy epidemic and contagious diseases. Some additional powers were conferred upon the board by 12 & 13 V. c. 111, passed to amend the act of the previous year for the prevention of diseases, which contained certain provisions relative to the burial of dead, and gave the general board of health power to superintend the providing of new burial grounds in parishes. The clauses applicable to that subject were only temporary, and expired after the lapse of a year. This subject, however, received more particular attention on the part of the Government, and the complaints which had long been made, and fully corroborated by the interesting report of Mr. Chadwick upon interments, were attempted to be remedied by the Legislature. In 1850, the statute, 13 & 14 V. c. 52, was passed, to provide for the burial of the dead in the metropolis. This subject was thereby placed under the management of the General Board of Health, which was thereby incorporated. But this act was repealed by 15 & 16 V. c. 85, which contained other regulations for the burial of the dead in the metropolis, and the authority of the General Board thereby created over the burial of the dead ceased.

"In the act above referred to for the prevention of diseases, 11 & 12 V.

c. 123, s. 11, the Crown was empowered to appoint a medical member of the board for the purposes of that act only, and by 13 & 14 V. c. 52, above noticed, power was given to appoint an additional member for the purposes of that act also; but when it was repealed in 1852, the Queen was empowered to continue, during the continuance of the General Board of Health, the appointment of the additional member of the board authorised by the former act.

"Thenceforward the Board of Health consisted of four members, one official, one honorary, and two paid commissioners, the last two being Mr. Edwin Chadwick and Dr. Southwood Smith.

"The commission was established by 11 & 12 V. c. 63, s. 4, for five years only, and its existence, therefore, would have terminated at the end of the session of Parliament next after August 31, 1853. * * * It was deemed advisable by the Government to alter the constitution of the board, and in 1854, by 17 & 18 V. c. 95, the provisions of the former statutes applicable to this subject were repealed, and a new board was created, analogous to the Poor Law Board, which consisted of a president, to be appointed by her Majesty, by warrant under her sign manual, the secretaries of state, and the president and vice-president of the Board of Trade. The president of the board was to receive a salary, and be capable of sitting in the House of Commons. The duties and powers of the General Board of Health were transferred to the new board, and it was enacted that the president alone, or any two or more of the members, might exercise the powers vested in the board.

"The existence of this board was limited to one year.

"By 18 & 19 V. c. 115, this board was continued for another year, but it was empowered to appoint a medical council and a medical officer. The power to appoint a medical officer only was exercised, and Mr. Simon was appointed accordingly.

"By 19 & 20 V. c. 85, this board was continued for another year. The 20 & 21 V. c. 38, continued its existence until the 1st September, 1858, a provision being introduced to the effect, that if a person holding an office of profit should be appointed president of the board, he should not receive any salary for the latter office.

In the last session of Parliament there was no renewal of the board, and it therefore determined on the 1st September in this year, after an existence of ten years.

"It will be seen by the statutes hereinafter printed, that such of the powers as were vested in the board under the statute for the prevention of diseases are temporarily vested in the privy council, and the control which has been given to the board under the Public Health Act, has been for the most part transferred to the secretary of state.

"Upon the change of the ministry in last spring, a shorter bill was proposed by the Government, which was subsequently adopted by the Legislature, and constitutes what is now termed the Local Government Act, 1858. The act of 1848 was left in full force, with the exception of the clauses constituting the General Board of Health, and some others, which were repealed to make room for the substituted provisions.

"The measure which the Legislature has passed in the late session has been termed by Parliament "The Local Government Act of 1858." It is difficult to see in what respects this title is justified by the act itself. Corporate boroughs, whose government depends upon their charters, are enabled to adopt the provision of the Act. So are Improvement Commissioners who are elected by the ratepayers of any locality, and the inhabitants of parishes and places of hitherto unsettled boundaries are empowered to adopt the act and elect Boards of Health, not with any indefinite powers of self-government, but to carry into execution the powers conferred by the Public Health Act, and those contained in the new law. Under the former act, it was necessary that the General Board of Health, the Queen in council, and sometimes the Legislature, should concur in sanctioning the adoption of the Act. Now, if it be not requisite to interfere with existing statutes or powers otherwise secured by the law, the provisions of the statute may be adopted by the simple act of the ratepayers and owners of property in the locality. The effects of this legislation is, that the benefits of the Model Acts referred to in the first part of this introduction are obtained without the necessity of a Private Act.

"If the locality be a corporate borough or a district under the management of popularly-elected commissioners, or be a parish or place with defined or known boundaries, the act may be adopted by the resolution of the council or commissioners in the first and second cases, and the ratepayers and owners of property in the third. When there is no defined boundary, the secretary of state, on petition, can assign one, and the place so defined will constitute the district of the new board.

"The council and the commissioners will, in the first cases respectively, form the board, but in the other cases the number of members must be determined by the electors, and will constitute a board, to be elected in the manner provided in the former statute, with this addition, that it will be competent for the secretary of state to divide the district into wards, analogous to the cases of municipal corporations and boards of guardians for parishes.

"Questions as to the proper extent and composition of the district, and as to the legality of the proceedings, may be referred to the secretary of state for decision.

"This is the great change in this scheme of legislation on this subject. The statute explains and enlarges the powers conferred upon the local board by the Public Health Act of 1848, and incorporates in it many of the provisions of the Model Acts which are found so beneficial, and oftentimes so necessary for the well-being of populous places, while it enables the Board of Health in other instances to avail itself of some provisions not absolutely requisite in all cases, but which will prove of great convenience in some districts.

"The statute, however, has not conferred upon the local boards unlimited power to carry out all their demands. Where they conceive that the property of individuals should be taken for the public good, without their assent, when they seek to set aside or alter authorities and arrangements

established by previous legislation, to alter or rescind the constitution created under the previous statute, or to obtain any extension of the powers expressly granted to them by the statutes, they must have special resort to the Legislature. But they must proceed through the Government. They must represent their requisitions to a secretary of state, who, after due inquiry, may make a provisional order, as in the case of the Privy Council under the former act, and this order he is required to submit to Parliament for confirmation by a public act.

"It will thus be found, that, though in some small details the local boards are released from the control of the General Board of Health, in all substantial matters, which were not perfectly free from restraint before, they must now submit to the secretary of state, and probably be compelled, as before, to seek the aid of Parliament."

The following statement shows what are the general contents of Mr. Lumley's volume, in addition to the Public Health Acts of 1852 and 1858, and the Local Government Act of 1858 :—"Although these two acts are most important and beneficial in their operations with reference to the general administration of local districts in regard to their sanitary condition, there are other laws which the Legislature in late years has passed, having for their object the improvement of the public health. These are contained in the statutes which have enforced the practice of the vaccination of young children, which subject common lodging-houses to regulation and control, which facilitate the establishment of public baths and washhouses, which provide summary remedies in all parts of the country for the removal of nuisances, and which have also provided preventive and remedial measures to meet sudden contagious and epidemic diseases of a formidable character.

"It has been deemed convenient to frame a collection of these various acts, which relate to the health of the people of England, into one volume ; and as the Local Government Act of itself is imperfect, those parts of the acts which have been incorporated with it have been included in this collection.

"In addition to the matters above referred to, the attention of the Legislature has been directed to the burial of the dead, and a series of acts have been passed relative thereto since 1849, by which churchyards and burial grounds have been closed, burial boards established, and numerous regulations passed upon the subject. It was found impracticable to include those acts in this volume, but the clauses which particularly refer to Local Boards of Health are appended."

Altogether, Mr. Lumley's work will be found very useful ; and it certainly affords evidence, both in the notes of the decisions, and the comments on the various enactments, with the explanations, of great care having been taken in its preparation. The work is both well got up, and cheap, which will be no small recommendation with many in these times of book-making.

Summary of Decisions.

EQUITY AND CONVEYANCING.

ASSIGNMENT OF PENSION.—*Insolvency of pensioner—Injunction.*—The defendant, a retired storekeeper, having had an annual pension or superannuation granted to him by the Treasury, assigned the same to the plaintiff, an insurance company, by way of security for a loan. Default having been made in payment, an application was made by the plaintiffs to the Paymaster-General, who refused to make payment to the plaintiffs. Afterwards the defendant became insolvent, and the commissioner in insolvency made an order recommending that £50 a-year, part of the said pension, should be paid by the Paymaster-General. The plaintiffs filed a bill stating that they did not intend to prove against the estate for their debt, and praying for an injunction to restrain the defendant from receiving the pension or the balance thereof after such payment to the official assignee as aforesaid. The official assignee was not made party to the suit. On motion the court granted an injunction to restrain the defendant from receiving the pension, except so much of it as had been recommended by the commissioner to be paid to the official assignee. *Lloyd v. Eagle*, 32 Law Tim. Rep. 194.

INJUNCTION.—*Shipping—Charter-party—Specific performance—Sale not restrained.*—The court will not decree specific performance of a charter-party nor interfere by way of injunction at the suit of the charterer to restrain the mortgagee of a ship from exercising his power of sale. *Mattos v. Gibson*, 7 Week. Rep. 100.

LEGACY DUTY.—*Executors liability—Assignee of legacy.*—Where a portion of a reversionary legacy is, by arrangement, handed over to the legatee, but no sum is retained by the executors to answer the legacy duty, and the legatee assigns over the other portion for value, when such latter portion falls into possession, the assignee is only liable to pay the duty on such portion, and the executor is not at liberty to retain, out of such portion, the duty payable for the portion originally handed over. *Bignold v. Giles*, 7 Week. Rep. 99.

PARTNERSHIP.—*Receiver—Praying for a dissolution—Accounts—Misconduct.*—The appointment of a receiver operates as an injunction, and the Court of Chancery will not, on motion, appoint a receiver in partnership cases, unless it sees its way to a decree for a dissolution at the hearing. If a partnership is continuing, or may continue, the court will only decree accounts to be taken. The question of a term, or no term, is one proper for the hearing of the cause, but if there be misconduct, the court can appoint a receiver before the end of a partnership term. *Baxter v. West*, 32 Law Tim. Rep. 155.

TRUSTEES.—*Trustee acts—Appointment of new trustees—Order for transfer of stock—Form of order.*—An order had been made in the following case upon a petition under the Trustee Acts (13 & 14 V. c. 60, and 15 & 16 V. c. 55), for the appointment of two new trustees, one of the old trustees

being out of the jurisdiction, and for the transfer of stock in the funds to them. It was decided, on the objection of the Bank of England to the form of the order, that where an order is made under the Trustee Acts for the transfer of stock, upon which the Bank of England is called to act, the order must state the facts which bring the case within the acts. *Re Mainwaring*, 32 Law Tim. Rep. 154.

EQUITY PRACTICE.

ADMINISTRATION-SUITS.—*Staying one of two creditors' suits.*—Costs.—Where two suits are instituted by different creditors for the administration of the estate of the deceased debtor, the form of order as to the payment of the costs of the plaintiff, in the suit which is stayed is, that the executor shall pay them if he have assets in hand, but if he have not, then that the plaintiff shall add them to his debt, and prove for his debt, and the amount of his costs in the other suit. *Canham v. Neale*, 32 Law Tim. Rep. 189.

ARBITRATION.—*Vendor and purchaser, C. L. P. Act, 1854, s. 12.*—*Appointment of umpire by the court.*—By the 12th sec. of the C. L. P. Act, 1854 (17 & 18 V. c. 125) it is provided, that if in any case of arbitration, where the parties or two arbitrators are at liberty to appoint an umpire, or third arbitrator, such parties, or arbitrators, do not appoint an umpire, or third arbitrator, any party may serve the remaining parties or the arbitrators, as the case may be, with a written notice to appoint an umpire, or third arbitrator; and if no appointment be made within seven clear days after service of such notice, any judge of the superior courts of law or equity, upon summons, to be taken out by the party having served such notice, may appoint an umpire, or third arbitrator, who shall have the like power to act in the reference, and make an award, as if he had been appointed by consent of all parties. Where vendor and purchaser entered into a contract for sale, at a price to be determined by two valuers named in the agreement, and as to matters in difference between the valuers, by an umpire, whom the valuers were directed to appoint before entering upon the valuation: Held, that this was not an arbitration within the 12th sec. of the C. L. P. A., 1854, and that on failure of the valuers to appoint an umpire, and on the other steps provided in the act having been taken, the Court of Chancery had no jurisdiction to appoint an umpire. *Semble*, that if in course of a treaty for sale disputes and discussions arise between vendor and purchaser, as to the price to be fixed, and they thereupon agree to refer the price to the valuation of certain persons, this would be an arbitration within the meaning of the 12th sec. of the said act. *Collins v. Collins*, 7 Week. Rep. 115.

BILL.—*Substituted service.*—Service of bill against a company which had transferred its business, but was not formally dissolved, directed to be made on the former deputy-chairman of the directors and secretary. *Gaskell v. Chambers*, 32 Law Tim. Rep. 188.

DISCLAIMER [4 L. C. 299].—*Foreclosure suit.*—Costs.—It is by no means a matter of course that a disclaiming defendant should receive costs

(4 L. C. 299; F. Bk. 285). In the following case it was decided, that where a subsequent incumbrancer, defendant in a foreclosure suit, offers to disclaim or release his interest before suit, he will be entitled to his costs. *Bradley v. Borlase*, 32 Law Tim. Rep. 156.

REVIVOR [4 L. C. 263].—*Supplemental bill*—15 & 16 Vic. c. 86, s. 52—*Death of defendant before appearance*.—By 15 & 16 Vic. c. 86, s. 52, in the event of the abatement of a suit, by death or otherwise, an order, of course, to revive the suit may be obtained, and will have the same effect as a bill of revivor would have had. In the following case, it appeared that A., one of the defendants to a foreclosure suit, died before appearance, having devised his interest in the equity of redemption to two of the other defendants: Held, that a supplemental bill was necessary for the purpose of bringing the interest of A. before the court. *Williams v. Jackson*, 7 Week. Rep. 104.

TRANSFER OF CAUSE.—*Notice of application*.—The practice requires that there should be one clear day's notice to the other side by a party applying for a transfer of a cause from one branch of the court to another. *Sidebottom v. Sidebottom*, 7 Week. Rep. 104.

COMMON LAW.

BILL OF EXCHANGE.—*Indorsee of overdue bill*—*Equities attaching thereto*—*Set-off*.—It is a well-established rule that an indorsee, after a bill is overdue, takes the bill, subject to the equities which attach to it. A bill of exchange is indorsed by drawer after it is overdue. The bill was accepted on the terms that drawer should hold certain goods, with power to sell and apply the proceeds in payment of the bill, if the same were not paid at maturity. The drawer, on non-payment of the bill when due, sells the goods, and realizes part of the amount of the bill: Held, affirming the judgment of the Court of Exchequer, that these facts afford a good answer *pro tanto*, to an action by the indorsee against the acceptor, the terms above stated establishing such equities as attach to the bill in the hands of the indorsee of a bill so overdue, and preventing his recovering the amount raised by sale of the goods by the drawer. *Holmes v. Kidd*, 7 Week. Rep. 108.

BILLS OF EXCHANGE ACT.—*County court*—*Affidavit for leave to defend*—*Other defences*—*Bill accepted, payable at a particular place*—*Presentment*—*Excuse for*.—There is nothing in the county court rules to restrain a defendant who has been allowed to defend an action under the Bills of Exchange Act, 1855, on an affidavit alleging forgery, from raising other defences at the trial, though not mentioned in the affidavit. Where a bill of exchange is accepted thus: "A. B., payable at the X. Bank, H—Street," presentment at the bank on the day it became due must be proved, and presentment to the acceptor at his private residence is not sufficient, to charge the indorser of the bill. The drawer took the bill, accepted as above, to the plaintiff to discount, and he refused, unless the defendant put his name upon it; the drawer afterwards returned to the plaintiff with the bill indorsed by the defendant, and the plaintiff thereupon

discounted it; and it appeared that the acceptor could not be found at the private residence indicated on the bill, and that he had no funds at the bank, and that it would not have been honoured by the bank if it had been duly presented there for payment: Held, that, though there might have been an excuse for want of presentment at the bank as against the drawer, there was none against the indorser. *Saul v. Jones*, 32 Law Tim. Rep. 91.

CARRIERS.—*Railway company—Duty to carry—Act of God.*—The duty of a railway company is to carry goods intrusted to them to be forwarded by a luggage or cattle train with all due expedition under ordinary circumstances, but when a snow-storm has occurred to impede the running of heavy trains without much extra exertion, they are not bound at all hazards and at any extra costs to expedite the transit: *Semble*, per Bramwell, B., they might be bound to divide the train, so as to forward it as quickly as practicable. *Briddon v. The Great Northern Railway Company*, 32 Law Tim. Rep. 94.

COPYHOLDS.—*Custom of manor—Right of lord to heriots from joint tenants.*—In Com. Dig. "Copyhold," K. 54, it is laid down, that "If a heriot be due on the death of every tenant, and the land be granted to joint tenants, no heriots shall be paid upon the death of one till the death of all, without a special custom; as all are but one tenant." The following case applies the same rule to the case of an alienation inter vivos: the case of tenants in common is distinguishable (see *Reg. v. Eton Col.*, 8 Q. B. 526). The custom of the manor of H., was that every copyhold tenant holding lands of the lord ought upon death or alienation to pay a heriot to the lord, and also a fine at the will of the lord: Held, that under this custom the lord was entitled to have one heriot and not four, on the alienation of a tenement within the manor by four joint tenants thereof. *Padwick v. Tyndale*, 7 Week. Rep. 53.

FEME COVERT.—*Acknowledgment by married woman* (F. Bk. 186)—*Requisites of affidavit—Fines and Recoveries Act—8 & 4 Will. 4, c. 74, c. 91.*—The court will not make an order that a married woman be permitted to convey landed property without the concurrence of her husband, unless the affidavit distinctly states that diligent efforts have been made just before the application to find the husband and obtain his consent. *Re Fletcher*, 32 Law Tim. Rep. 93.

INCLOSURE ACT.—8 & 9 Vic. c. 118—*Right of valuer to enter land.*—Where part of the land belonging to a man is, under the Inclosure Acts, to be released from a servitude to which it was before liable, the provisions of the acts are applicable thereto. Therefore, a valuer appointed under the Inclosure Act, 8 & 9 Vic. c. 118, is entitled to enter upon the land subject to the servitude (a right of common), for the purpose of making a survey and map as directed by the act. *Grubb v. Brown*, 32 Law Tim. Rep. 89.

NEGLIGENCE.—*Railway—Fire from engine—Burning adjoining property.*—A railway company, on the side of one of its cuttings adjoining the line of railway, had high dry grass growing, of a very combustible character, extending to the plaintiff's wood, also adjoining defendant's line of railway. Fire escaped from the engines, either on to the plaintiff's wood, or on the

defendant's lands where the dry grass was, and so continued into the adjoining wood of the plaintiff and burnt it. The defendant, to guard against and endeavour to prevent accidents of this description, had put a cap on the chimney of the engine, secured its ash-pan, travelled at a slow pace, and, in fact, used every practicable precaution to the locomotive to make it safe; yet, notwithstanding this, the grass repeatedly caught fire. The learned judge, at the trial, left it upon the evidence strongly to the jury in favour of the plaintiff, observing, that if defendants had kept their banks shorn—or a strip of incombustible matter, as a line of gravel or stone—between their land and the plaintiff's, the mischief might not have happened: Held, that this was not misdirection; that if the fire originated on the defendant's own land, they were not protected by the 14 Geo. 3, c. 17, s. 84, as that statute does not apply where the fire originates in the use of a dangerous instrument, knowingly used by the owners of the land on which the fire breaks out; that the 8 & 9 Vict., c. 20, s. 86 (the Railway Clauses Act), afforded no defence to this action, under the circumstance, on this case, and that the defendants were liable for the damage occasioned. *Vauchan v. The Taff Vale Railway Co.*, 32 Law Tim. Rep. 163.

PUBLIC COMPANY.—*Joint Stock Companies Act*, 7 & 8 Vic., c. 110. —*Inspection of book of proceedings of company, and of book of proceedings of directors.*—The Act 7 & 8 Vic., c. 110, does not confer upon a shareholder in a joint stock company the right to inspect at any time the book containing the minutes of proceedings of the directors. *Reg. v. Secretary of the Maraquita and New Grenada Mining Company*, 7 Week. Rep. 98.

RAILWAY AND CANAL TRAFFIC ACT, 1854 [4 L. C. 130, 186, 304, 323, 401].—*Undue preference or prejudice—Employing other lines of company.*—It is not a legitimate ground for giving a preference to one of the customers of a railway, that he engages to employ other lines of the company for traffic, distinct from and unconnected with the goods in question, or their carriage, although thereby an advantageous custom is secured for the company on the other lines; for it is undue and unreasonable to charge more or less for the same service according as the customer of the railway thinks proper or not to bind himself to employ them in totally distinct transactions. *Re. Bazendale and the Great Western Railway Company*, 7 Week. Rep. 54.

REGISTRATION IN MIDDLESEX.—[1 L. C. 19—21, 429—434].—*Deed-poll.*—*Church Building Act*, 8 & 9 Vic. c. 70, s. 24. Under the Middlesex Registration Act, 7 Anne, c. 20, a memorial of a deed-poll must be attested by one of the witnesses to its execution by the grantor. It appeared that a deed-poll was executed in favour of the Ecclesiastical Commissioners of England, and duly sealed by them; and that the memorial to register in Middlesex was attested by one of the commissioners (the grantees) and also by a witness who attested the commissioners' execution: Held, that the memorial ought to be attested by one of the witnesses to the execution of the deed by the grantor, and that the registrar was justified in refusing to register the deed of such memorial. *Reg. v. The Deputy Registrar of deeds for the County of Middlesex*, 7 Week. Rep. 64; 32 Law Tim. Rep. 146.

STATUTE OF LIMITATIONS.—*Surface land—Injury by mining underneath—When cause of action arises.*—In cases of concealed injuries, a great struggle has been made to get rid of the effect of the Statute of Limitations, by postponing the commencement of its operation (3 L. C. 264, 274). In the following case the judges differed, but the majority acted on the doctrine, that an injury to a right imports conclusively a damage done, and, therefore, that a right of action arises the moment any act is done which is an infringement of the right, although no visible damage or inconveniencies in the popular sense can then be proved. It appeared that the plaintiff was owner of an ancient messuage, &c., and the defendant, having worked mines under and near thereto, leaving sufficient support, afterwards worked other mines at a little distance, in such a way that the surface-land gave way, and caused a thrust, which extended gradually to the plaintiff's premises, and caused damage thereto. The working which caused the thrust was more than six years before action; but the actual damage to the plaintiff's premises was within the six years. The damage to the plaintiff's premises was still going on and increasing: Held (per Lord Campbell, C. J. and Coleridge, J.) that the cause of action was the injury to the right of the plaintiff, to the support of the underground strata, and not the consequential damage, and that the Statute of Limitation ran from the time when the act was done, which was the cause of the damage, and not from the time when the damage actually arose. Per Wightman, J., that the cause of action did not arise until actual damage was done to the plaintiff's premises. *Bonomi v. Backhouse*, 32 Law Tim. Rep. 156.

TURNPIKE ROADS.—*Ownership of—Sale under acts of Parliament.*—The soil of a turnpike road is not vested in the trustees of the road, but remains in the persons who were entitled to it before the act passed for their appointment: they have only the control of the highways (per Lord Kenyon, *Davison v. Gi.*, 1 Ea. 69). Where local acts of Parliament gave trustees power to divert, alter, and widen a road, and to purchase land for that purpose, and vested the land so purchased, and the part of the road which was abandoned in them: Held, that as to a part of the road affected by the acts, the common presumption still remained, that the owner of the adjoining enclosures was proprietor *usque ad medium filum viæ*. Lord S. was owner of two fields adjoining a road, which he sold to the railway company; the conveyance to the company referred to plans and schedules in which the roads and fields were described, numbered by three different numbers, and the quantities and occupiers of each were separately stated; and it conveyed the two fields to the company by the same numbers and descriptions as those in the plans and schedules referred to, but made no mention of the road whatever: Held, that, under the circumstance, the roads did not pass, it being clear that both the parties to the conveyance thought the road was not the soil of the vendor. *The Marquis of Salisbury v. The Great Western Railway Co.*, 7 Week. Rep. 75.

COMMON LAW PRACTICE.

COSTS IN ERROR.—*In the House of Lords—Practice—Affirmance of judgment of court below.*—The Court of Queen's Bench will allow to a party

his costs of proceedings in error to the House of Lords where the judgment of the House is a simple reversal of the former judgment of the Exchequer Chamber, reversing the opinion of the Court of Q. B., but not if there has been any arrangement, or anything in the nature of an arrangement, between the parties. *Cooper v. Slade*, 7 Week. Rep. 63.

JURY.—*Interested jurymen*—*Cause of challenge*—*New trial*.—The court will not set aside a verdict in favour of a joint stock company merely on the ground that a shareholder was upon the jury, and was not challenged in consequence of the circumstance not being known when he was called. *Williams v. The Great Western Railway Co.*, 7 Week. Rep. 97; 32 Law Tim. 147.

WRIT OF SUMMONS.—*Lunatic defendant*.—[Pract. C. L. 64].—*Waiver of personal service*.—The defendant, being confined in a lunatic asylum, the keeper refused access to him: Held, the Court of Exchequer could not give liberty to proceed under sec. 17 C. L. P. Act, 1852. *Williams v. Maggs*. 32 Law Tim. Rep. 95.

DIVORCE AND PROBATE.

JUDICIAL SEPARATION.—*At the suit of a wife*—*Cruelty*—*Custody of children*—20 & 21 Vic. c. 85, s. 35.—Where the court decrees a judicial separation at the suit of the wife by reason of cruelty, it will, according to the circumstance of the case, exercise at its discretion the power given to it by the 35th section of the Divorce Act without feeling itself bound to the rules by which courts of equity and common law have been guided in dealing with questions of custody of children. In the present case, though there was no suggestion that the children have been cruelly or improperly treated by the husband, the court directed the children to remain in the custody of the mother so long as she maintained and properly educated them without expense to her husband (he to have proper access to them) till they should respectively attain fourteen years of age. *Marsh v. Marsh*, 32 Law Tim. Rep. 197.

WILL.—*Revocation*—*Tearing off signature* [5 L. C. 90, 174].—A person made a will, having signed the prior sheets at the foot; to the last and fifth sheet he attached his signature, and to which was the usual attestation clause. In consequence of alterations in his family by deaths and otherwise he intended to make a fresh will, and with that view tore off his signature to the prior sheets and struck his pen through the signature to the last sheet, and it was so found after his death: Held, that this was evidence of an *animus revocandi*, and the will declared void although it has been admitted to probate. *Williams v. Tyley*, 32 Law Tim. Rep. 194.

BANKRUPTCY AND INSOLVENCY.

ADJUDICATION.—*Petition for adjudication by bankrupt*—*Assets under £150*.—By 17 & 18 Vic. c. 119, s. 6, a trader petitioning for adjudication against himself must, before the adjudication, make it appear to the satisfaction of the court, that his available estate is sufficient to produce the sum

of £150 at least (1 L. C. 153). A trader petitioned for adjudication of bankruptcy against himself, and satisfied the commissioner that he had available assets of the value of more than £150. At the meeting for granting the certificate, it appeared that the assignees had not realized £150 in cash, and the commissioner, therefore, postponed granting the certificate. But the Lords Justices, having ascertained that the bankrupt had unrealized property of a greater amount, and that the sole ground for postponing the sale was the benefit of the creditors, granted the certificate immediately. *Ex parte Slater*, 7 Week. Rep. 101.

ADJUDICATION.—*Transfer of petition from London to a country district on application of assignees.*—Where a trader becomes bankrupt upon his own petition in London, and it appeared that the great majority of the creditors resided in and about Hull, and that no London creditor had proved under the petition, the Court of Bankruptcy, at the instance of the assignees of the country creditors, ordered the prosecution of the petition to be transferred to the court for the Leeds district. *Re Baker*, 32 Law Tim. Rep. 200.

ARREST BY COUNTY COURT AFTER ADJUDICATION.—*Jurisdiction of the court to discharge from such process under the 1 & 2 Vic. c. 110.*—There is no power to discharge an insolvent under the 1 & 2 Vic. c. 110, after adjudication, when he has been subsequently arrested under county court process; but the prisoner under such circumstances, must apply for his discharge to the committing court, whether superior or inferior, and such court is thereupon, upon due proof of the adjudication and of notice to the detaining creditor of such insolvency, bound to discharge him. *Re Wortley*, 32 Law Tim. Rep. 96.

ARREST BY COUNTY COURT IN PROTECTION CASES.—*Commitment by City Sheriff's Court—Discharge under 7 & 8 Vic. c. 96 s. 29.*—Where an insolvent is arrested and committed under a judgment summons for non-payment of a debt duly entered in a schedule filed under the Protection Acts: Held, that he is entitled to his immediate discharge. *Re Rawson*, 32 Law Tim. Rep. 96.

CERTIFICATE.—*Where not a discharge—Guarantee—Bankrupt Law Consolidation Act, s. 178*—“*Liability to pay money upon a contingency*”... *Proveable claim.*—By s. 178 of the Bankruptcy Consolidation Act, liabilities contingent at the time of the bankruptcy may be admitted as a claim for such sum as the commissioner shall think proper; and after the contingency has happened and the demand has been ascertained, a demand may be proved: this section has given rise to much difficulty (exp. Todd, 2 L. C. 130; Key, Bankr. 91—93, 108). In the following case it appeared that the plaintiffs, having received from L. a continuing guarantee for the payment of goods to be supplied to a third person, L. subsequently became bankrupt, and after the bankruptcy and certificate, the plaintiffs supplied goods to the extent of the guarantee: Held, in the Exchequer Chamber, (reversing the judgment of the Common Pleas) that the plaintiffs were entitled to recover for the goods so supplied in an action against L., upon the guarantee, upon the ground that the claim was not a liability to pay

money on a contingency, within 12 & 13 V. c. 106, s. 178, and not being proveable under that section, the certificate was no discharge. *Boyd v. Robins*, 7 Week. Rep. 78.

FUTURE ACQUIRED PROPERTY.—[F. Bk. 224]—*Insolvent—Property which cannot be taken in execution—Petition—Motion.*—Where property is acquired by an insolvent after he has been discharged under the act, which cannot be taken in execution under the judgment entered upon the warrant of attorney, executed by him before his adjudication as required by the act, the assignee may apply to the insolvent himself to convey, assign, or transfer such property, or so much thereof as may be sufficient to satisfy the debts upon his schedule, and should he refuse to do so, the assignee may apply to the court by petition in a summary way, setting forth the facts of the case, that the insolvent may be taken and committed to custody notwithstanding his adjudication: Held, that an application for this purpose must be made in the form of a petition, and not by motion. *Re Dawson*, 32 Law Tim. Rep. 96.

INSOLVENT'S SCHEDULE.—*Petition under 1 & 2 Vic. c. 110, filed upon a debt omitted from a prior protection schedule—Power to amend schedules in protection cases upon the day named for granting a protection order under the 28th section of 7 & 8 Vic. c. 96.*—Held, that a petition filed under 1 & 2 Vic. c. 110, upon a debt omitted from a prior protection schedule, will be dismissed: Held, also, that in protection cases, the day named for granting a protection order under the 28th section of 7 & 8 Vic., c. 96, is also an adjournment for the purpose of hearing, and that the court has the same power of permitting amendments of the schedule by the insertion of debts accidentally omitted upon notice to creditors as it possesses upon the day for the final order. *Re Ealden*, 32 Law Tim. Rep. 199.

PROOF.—*Double Proof—Assignment for benefit of creditors.*—The rule of the Court of Bankruptcy against double proof is a technical rule, and ought not to be extended. Two traders, partners, assigned their partnership property to a trustee upon trust to sell for the benefit of creditors and to divide the surplus, if any, according to the partnership articles. At that time the partners were indebted to the petitioner on their joint and several promissory note. Afterwards one of the partners became bankrupt, and the petitioner, having executed the deed of assignment in respect of the amount due on the promissory note, claimed also to prove against the separate estate of the bankrupt for the same sum: Held, that the proof must be allowed. *Exp. Thornton*, 7 Week. Rep. 70.

PUBLIC COMPANY.—*Joint Stock Company—winding-up—Who entitled to present petition.*—A shareholder in a limited company, who has paid the full amount of his shares, is a contributory within the meaning of the 69th section of the Joint Stock Companies Act, 1856, and entitled to present a petition to wind up the company. A shareholder and director, who has lent money for the purposes of the company, secured upon the promissory note of his co-directors, in the name of the company, is a creditor entitled to present a petition to wind up the company. *Ex parte Heneage*, 32 Law Tim. Rep. 199.

PUBLIC COMPANY.—*Joint Stock Company*—*Rights of contributories inter se*—*Free share*—*Holders of not entitled to preference over ordinary shareholders.*—In settling the rights of contributories *inter se*, under a winding-up order, the court will not recognise the holders of free shares, given as an inducement to them to become directors, as entitled to exemption from liability to contribute in preference to the other shareholder. *Ex parte Cropp*, 32 Law Tim. Rep. 152.

REPUTED OWNERSHIP.—[4 L. C. 16]—*Goods in possession of bankrupt*—*Title of assignees*—*Goods assigned to bankrupt on certain terms, but let out to third party on hire.*—The cases on reputed ownership still continue to present many difficulties, and it has now been decided that goods assigned to a party on certain terms and let out on hire by him at the time of his bankruptcy, are nevertheless in his reputed ownership; in other words, there may be a reputed ownership of goods not in the actual custody of the bankrupt, but which he has bailed to another. Thus, where a chattel was assigned to L., subject to the condition that it should be returned to the owner on demand in writing, and L. afterwards became bankrupt, it was held, that such chattel was in L.'s possession, and passed to his assignees, although at the time of his bankruptcy it was not in his actual possession, but in that of a third person. *Hornshy v. Miller*, 7 Week. Rep. 53.

SALE OF PROPERTY.—*Sale of reversion to bankrupt after certificate—Fraud.*—A trade assignee sold to the bankrupt after he had obtained his certificate a reversionary interest in a legacy, to which he was entitled under the will of his father-in-law. The reversion fell into possession shortly after the purchase, and before the purchase-money had been paid. The official assignee refused to recognise the sale: Held, that in the absence of fraud, or proof of insufficient value, the contract was valid, and the purchaser was declared entitled to the legacy. *Re Ward's legacy*, 32 Law Tim. Rep. 189.

CRIMINAL LAW.

ARSON.—*Setting fire to goods in a house in the prisoner's occupation, with intent to defraud*—*Pleading—Fire insurance*—14 & 15 Vic. c. 19, s. 8—7 Will. 4, and 1 Vic. c. 89, s. 3.—It is a felony under 14 & 15 Vic. c. 19, s. 8, coupled with 7 Will. 4, and 1 Vic. c. 89, s. 3, for a man to set fire to goods in a house in his own occupation with intent to defraud an insurance company by burning the goods. *Reg. v. Lyons*, 7 Week. Rep. 58.

FINDING LOST PROPERTY.—*Felonious intent to appropriate at time of finding*—*Direction to jury.*—The following case is a further confirmation of what has been already stated (F. Bk. 60, 198, 319; 1 L. C. 346; 2 Id. 12, 230). In order to convict the finder of lost property of larceny it is essential that there should be evidence of a felonious intention to appropriate the property at the time of finding; and evidence of a subsequent intent is insufficient. Upon the trial of the finder of a purse for larceny, the jury were directed that a felonious intent was necessary in every larceny, but that it might be inferred from subsequent as well as immediate acts;

and, if they were satisfied that the prisoner heard the landlady of a public-house, where he subsequently went, speaking of the loss, and did not take measures to make restitution, they might infer felonious intention: Held, that the direction was wrong, as it was calculated to mislead the jury to suppose that a felonious intent subsequent to the finding was sufficient. *Reg. v. Christopher*, 7 Week. Rep. 60.

INDICTMENT CHARGING PREVIOUS CONVICTION.—6 & 7 Will. 4, c. 111—*Evidence of receiving—Principal in second degree.*—Where an indictment for felony lays a previous conviction, notwithstanding that when the prisoner is given in charge to the jury the subsequent felony must be read alone to them in the first instance, it is no objection to the indictment that the previous conviction is laid at the commencement. *Reg. v. Hilton*, 7 Week. Rep. 59.

LAND TAX.—*Rateability of bridge tolls—Validity of appointment of assessors and collectors.*—Under the Land-tax Act, 38 Geo. 3, bridge tolls are rateable of the land tax. A section, enacting that the bridge and roads shall not be chargeable with any parochial rates or assessments whatsoever which shall or may be charged upon any par. &c., in which the said bridge or roads may be, only exempt from rates upon the parish for local purposes, and not from liability to land-tax. Tolls are a distinct element from the land on which a bridge is built, and, therefore, the redemption of the land from land-tax does not exempt the tolls from rateability. *The Company of Proprietors of Waterloo Bridge v. Cull*, 32 Law Tim. Rep. 158.

PAUPER.—*Order of removal—9 & 10 Vic. c. 66, s. 1—Proviso—Imprisonment under sentence of penal servitude—Interruption of residence.*—Under § 10 Vic., c. 66, s. 1, imprisonment in England, under a sentence of penal servitude, is not an interruption of the residence necessary to confer irremovability. *Reg. v. The Inhabitants of Potterhamworth*, 32 Law Tim. Rep. 158.

TURNPIKE TOLL.—*Exemption—Clergyman going to his parochial duties*—3 Geo. 4, c. 126, s. 32.—Under sec. 32 of the 3 Geo. 4, c. 126, a clergyman of a parish is exempt from turnpike toll in going to his parochial duties within his parish, though the turnpike-gate through which he passes is not in the parish to which he is going to perform such parochial duties, but in another and a distant parish. *Temple v. Dickinson*, 32 Law Tim. Rep. 90.

HILARY TERM EXAMINATION.

The Council of the Incorporated Law Society have issued a circular, stating, that in order to encourage the careful study of the law, the examiners of the candidates for admission on the roll of attorneys, intends, on the examination to take place in next Hilary term, and subsequently to select the names of the candidates under the age of twenty-six years, who,

in passing their examination, shall appear to have deserved honorary distinction, with a view to the Council presenting to such candidates a prize of books or certificate of merit.

The Honourable Society of Clifford's-inn also intend to give a sum of twenty guineas, and the Honourable Society of Clement's-inn a sum of ten guineas yearly, to provide testimonials for such of the candidates under the age of twenty-six as in passing their examination shall merit distinction; and the Council are empowered to apply these annual gifts in such way as may appear to them best adapted to give effect to the objects of the societies of Clifford's-inn and Clement's-inn.

The examiners appointed for the examination of persons applying to be admitted attorneys, have fixed Thursday, January 20 next, at half-past nine in the forenoon, at the Hall of the Incorporated Law Society, in Chancery-lane. The examination will commence at ten o'clock precisely.

The articles of clerkship and assignment, if any, with answers to the questions as to due service, according to the regulations approved by the judges, must be left with the Secretary on or before Monday January 17.

Where the articles have not expired, but will expire during the term, the candidate may be examined conditionally; but the articles must be left within the first seven days of term, and answers up to that time. If part of the term has been served with a barrister, special pleader, or London agent, answers to the questions must be obtained from them, as to the time served with each respectively.

A paper will be delivered to each candidate, containing questions to be answered in writing, classed under the several heads of 1. Preliminary. 2. Common and Statute Law, and Practice of the Courts. 3. Conveyancing. 4. Equity, and Practice of the Courts. 5. Bankruptcy, and Practice of the Courts. 6. Criminal Law, and Proceedings before Justices of the Peace.

Each candidate is required to answer all the preliminary questions (No. 1); and also to answer in three of the other heads of inquiry, viz.—Common Law, Conveyancing, and Equity.

The examiners will continue the practice of proposing questions in bankruptcy, and in criminal law and proceedings before justices of the peace, in order that candidates who have given their attention to these subjects may have the advantage of answering such questions, and having the correctness of their answers in those departments taken into consideration in summing up the merit of their general examination.

LAW REFORMS.

False pretences—Enfranchisement—Divorce Act—Legitimacy Declaration Act.—As usual, Lord Brougham has given the world his views upon the last session, and from his letter to the Earl of Radnor we select the following as having a practical bearing:—

"It was found that the true construction of the old act punishing the obtaining money or goods on false pretences, did not reach the cases of acceptance of bills or signature of notes; so that a person might cheat you out of your acceptance or signature for £1,000, because it had no value in your hands; but it became the means of at once charging you with that sum at the suit of the discounters, who had given value for it without the knowledge of the fraud. At the suggestion of the Law Amendment Society, I obtained the assent of Parliament to a bill for amending this glaring defect in our criminal, I may say, in our mercantile law. The Copyhold Acts, which I was some years ago prevented from making as effectual as I had desired, and which did not give either to the lord or the tenant sufficient powers of compelling enfranchisement, still continue inadequate; but a considerable portion of the compulsory powers I had so long contended for is given by an act passed late in the session; and I greatly approve of the provisions respecting certificates of incumbrance, which really make them a marketable security transferable by indorsement. The violent opposition to the Divorce Act of 1857 had caused many defects to be left in it. The adversaries of that act resisted the Attorney-General's Bill to amend it; and hence some material defects are allowed to remain. But considerable good has been effected by extending the Judge Ordinary's powers; by protecting the deserted wife's property; by admitting the evidence taken in suits before 1857; by removing all doubt as to appeal in cases of nullity of marriage; and by enabling the court to dismiss a party from the suit in which there was no evidence against him, in order that he may be a competent witness. This last provision was thought necessary in consequence of the court having decided that my Evidence of Parties Act (1851) excluded parties under the act of 1857, and that they could not be made competent by dismissal. I ventured, with great deference, to agree with the minority of the judges, who were divided in that case, and I had hoped that the judgment would be altered on further consideration. The new act, however, removes all doubt and difficulty. But another measure of the Attorney-General must be regarded as a very important step in the right direction, and is likely to be followed by further progress, though in itself it may seem to be of subordinate importance, from being confined to one kind of suit. I allude to the act introducing for the first time into our law the declaratory action found so beneficial in Scotland, for the security of titles, prevention of vexatious litigation, and preserving the testimony of living witnesses. This act is confined to cases of legitimacy, marriage, and place of birth; it enables any person to apply for a decree of the new court, declaring his legitimacy, the validity of the marriage of his parents and their parents, and that he is a natural born subject. The decree is not to affect the rights of persons not cited in the cause, nor of those claiming through persons cited. The want of the declaratory action in England has been complained of by all chancellors when dealing with Scotch causes under that beneficial law; and having more than once both joined in this complaint, and endeavoured to supply the defect (it formed the subject of one of my nine bills, introduced in 1845, the greater part of which have

since passed, but not this), I begin to entertain hopes, from the partial success of my friend the Attorney-General, that hereafter the same remedy will be extended generally, and persons no longer obliged to continue in uncertainty of their rights until actually sued, when their adversaries alone may possess the evidence their case requires. The step which has been taken in Ireland for the permanent establishment of the Incumbered Estates Court, and the extension of that most important jurisdiction to other than cases of incumbrance, is of incalculable value. It really gives one hopes of a similar benefit being conferred upon England. But I was induced again to present my bill for facilitating the transfer of real property; the postponement, however, of so large a measure for further discussion was quite unavoidable. I certainly consider it of great importance, and the rather because it is grounded on actual experience. The bill was drawn by my very able and learned friend Mr. Fawcett, and the plan is the result of his long and various experience. He is an excellent conveyancer and practised lawyer. But the experience to which I refer is as steward of many of our Cumberland copyhold and customary manors during a period of thirty years. Thus, in one he has never found a single instance of disputed title in all the 500 estates of the manor; they have every one been repeatedly passed by sale, mortgage, and devise or descent. The cost of the conveyance never exceeds a few shillings, and the length of the deed 100 words. That the extension of this system to freehold estates will require some machinery for registration is clear; but, when you consider the provisions of the bill, I would fain hope that you will admit the change in our system to be both practicable and safe."

CORRESPONDENCE ON MOOT POINTS.

It would appear that the new plan (vol. 5, pp. 203, 204) does not meet with approval, if we may judge by the non-receipt of names for insertion. The only gentlemen who have responded are Mr. Peacock and Mr. S. W. Turner. In order to induce others to follow their example, we give the communication of the former *in extenso*, particularly as it contains a suggestion respecting the new plan.

"I have read your article on Correspondence of Moot Points, and quite agree with your plan, and shall be glad by your placing my name on your new list, and also retaining it in the old list if you think well.

"I should be glad to receive points from any gentleman, and would reply (although, living in the country, I should not be able always to give authority for my answers) in the course of two or three posts, to the best of my ability.

"I think if we could form into sections, and after a question has been round, which should be done in a month, the question and answers should be sent

to you for publication, by which means all would see what each section was doing, and any member could also write to any gentleman not on his own section if thought necessary, upon any particular subject treated of by the section of which the gentleman written to would belong.—Yours, &c., J. F. PEACOCK" (J. Cutts, Esq., Solicitor, Chesterfield).

Mr. Turner says:—"Have the goodness to add my name to the new List of Correspondents, as I quite agree with your suggestions.—Yours, &c., SAMUEL WILLIAM TURNER," (Bank Street, Sheffield).

Another correspondent says:—"I am glad to see that steps are being taken by my fellow-subscribers to provide for the proper discussion of Moot Points. The suggestions of 'Aliquis' in the last number of the CHRONICLE are well worth attention. If carried into practice I shall willingly follow them out, but if not I should wish to adopt the *New Plan*. The Moot Points must appear, together with their answers, and not as at present in different numbers, if they are to be really of service."

We really wish our subscribers would come forward and bestir themselves in earnest about the correspondence system, and particularly settle whether there shall be a new system, or whether the old one shall go on. At present we are compelled to insert the old list, but we should be glad of some additions to that list, as some new blood is required, in order to keep up a healthy circulation of correspondence.

Moot Points.

No. 1.—*County Court Warrant—Guernsey.*

A warrant of commitment is issued out of the county court of S., against B., who stands committed to the county gaol for forty days. B., to avoid the process, removes to Guernsey. What steps can now be taken to bring B. to justice? R. J. B.

No. 2.—*Bankruptcy—Petitioning Creditor—Execution.*

A., being a trader within the meaning of the bankruptcy laws, executes an assignment for the benefit of his creditors. B., one of his creditors, will not execute it, but puts A. in prison. Afterwards B. wishes to file a petition in bankruptcy against him. Can he do so? or is A.'s imprisonment a satisfaction of the debt? and has the imprisonment any effect on the deed of assignment?

No. 3.—*"Yards" in Deeds.*

In very many old deeds, the extent of land is ascertained by so many yards. Can any of your correspondents say what is the present statute measure of a yard of land, and name an authority? W. M. SHERRING.

Answers to moot Points.

No. 21.—*Adultery — Lunacy* (vol. 5, p. xix).

The committee of a lunatic may institute proceedings against the wife of the lunatic for adultery (*Parnell v. Parnell*, 2 Phill. Eccl. R. 158). In the above case, Lord Stowell said that he was not aware of any case which had occurred precisely similar; it must, therefore, be decided, *not on express authority*, but on principles or rules of analogy drawn from other authorities which are clear and undisputed. The question (said he) resolves itself into two points, first, whether a lunatic is put out of the protection of the law; and, secondly, if he is not, whether there is any mode in which redress can be obtained? On the first, there can be no doubt, and it never can be asserted that the wives of lunatics should be universally released from the duties of their marriage vow. It would (he continued) be an imputation on the law of this country, to suppose that it had not provided some remedy against such a mischief. Then, in what way is this redress to be afforded? It must be in the same way as other cases—by the committee. The lunatic cannot personally institute the suit, and, therefore, he must act by his ordinary guardian (see further *Parnell v. Parnell*, 2 Hagg. Cons. R. 170, 171).

JOHN W. S. LAVENDER.

No. 22.—*Lunatic—Serving process* (vol. 5, p. xix).

The question does not disclose whether the service of the writ was sought to be effected at the private house of the lunatic, or elsewhere. Assuming, as I gather from the question, that it was at the private house of the lunatic, I am of opinion that service cannot be effected there.

In *Holmes v. Service* (24 L. J. C. P. 24), it was held, that there was no means of serving the writ on the defendant (a lunatic), or of bringing it to his knowledge, and that the plaintiff was not entitled to proceed under the C. L. P. Act, 1852, as if personal service had been effected; and, consequently, that as the writ of *distringas* was abolished, there was no means of proceeding in an action against such lunatic.

In the case of *Ridgway v. Cannon*, in the Queen's Bench, that Court said, that although the manner of serving a lunatic in an *asylum* was provided for, yet the means of serving a lunatic in a private house was not. Until the appointment, therefore, of a committee of such lunatic, no proceedings can be had.

JOHN W. S. LAVENDER.

No. 27.—*Carriers—Excessive charge—Loss of refused parcel* (v. 5, p. xx.).

It has been decided, that where the consignee of goods refused to receive them on the ground of being charged too much for carriage, and the goods are returned to be reconveyed to the consignor, and lost on the return journey, the company are responsible, and liable in trover for the value of the goods, provided, a return be demanded within a reasonable time;

though it would appear the better course for the consignee to take is to receive the goods, and pay the money under protest.

In an action for not carrying and delivering the parcel at P., with a count in trover, the defendants pleaded to the first count that the plaintiff refused to pay the reasonable carriage, and, therefore, they refused to deliver; and "not guilty" to the second count: and the plaintiff replied to the plea to the first count that, within a reasonable time after the offer to deliver the parcel, the plaintiff was ready and willing to receive it, and pay the carriage, but the defendants refused, and discharged the plaintiff from tendering it, *and the parcel was lost*. The jury found that the demand of the parcel at P. on the second day was within a reasonable time, and that the parcel was sent back to L. before a reasonable time had elapsed, and also that *the parcel ought not to have been sent back to L.*: Held (Bramwell, B., *dissentiente*), that the plaintiff was entitled to the verdict on the issues on both counts (Crouch v. Great Western Railway, L. J. N. S. Ex. 148).

JOHN W. S. LAVENDER.

DEBATING SOCIETIES.

LONDON LAW STUDENTS' DEBATING SOCIETY.

The following are the subjects for discussion in January, 1859 :—

January 4th. Does the burden of a covenant, entered into by a lessee, with the reversioner and a person having no estate, jointly, run with the land? (Wakefield v. Brown, 9 Q. B. 209; Magnay v. Edwards, 13 C. B. 469; S. C. 1 Smith's L. C. 49). *Affirmative*—Mr. Ellgood and Mr. Bruce. *Negative*—Mr. Mercer and Mr. Barfield.

January 11th. A merchant having notice of the insolvency of his vendee, indorses the bill of lading of the goods to his agent, for the purpose of stopping *in transitu*. Does the indorsement confer on the agent a right to sue a wharfinger, in his own name, for delivery of the goods? (Morrison v. Grey, 2 Bing. 260; Waring v. Cox, 1 Camp. 369, 18 & 19 V. c. 3. *Affirmative*—Mr. Phillips and Mr. Brady. *Negative*—Mr. Dowse and Mr. Mason.

January 18th. Is it desirable that writers in the public papers should be compelled to affix their signatures? Mr. Smith is appointed to open the debate, and Messrs. Humphry, Prichard, and Woolf to speak on the question.

January 25th. A., by his will, made in 1850, gave a legacy to his daughter B. C., who is an attesting witness to the will, is the husband of B. A. afterwards made a codicil to his will, attested by other and disinterested witnesses, by which he revoked the appointment of an executor, but in all other respects confirmed his will. Is the legacy to B. good? *Affirmative*—Mr. Jones and Mr. Parr. *Negative*—Mr. J. F. Crump and Mr. J. H. Scott.

LIST OF CORRESPONDENTS.

(OLD SYSTEM.)

THE following is a corrected list of correspondents on Moot Points, to which the names of any other articulated clerks or solicitors can be added :—

- Alderton, T. H., at Messrs. Bicknell, 79, Connaught-terrace, Edgeware-road, London.
- Aldritt, C. N., Luton, Beds.
- Arboun, S., at Messrs. Pew and Co.'s, Henrietta-street, Covent-garden, London.
- Barker, Henry, at W. Barker's, Esq., Huddersfield.
- Beale, A., No. 164, Friar-street, Reading.
- Beard, J. T., High-street, Hadleigh.
- Beaumont, J., solicitor, Great Coggeshall, Essex.
- Beck, C. G. H., (Corresponding Secretary to the Worcester Law Students' Society), Spring-hill, Worcester.
- Betts, J. B., at Messrs. Mercer and Edwards', solicitors, Deal.
- Bishop, C., jun., of Llandovery.
- Brice, W., Bruton, Somersetshire.
- Brough, T. L., at J. C. Hind's, Esq., solicitor, Stafford.
- Brown, J. S., of Thorpe Hamlet, Norwich.
- Clough, G. H., Worksop, Notts.
- Cook, J., of Witham.
- Cooper, T., 29, Jesus-lane, Cambridge.
- Cordes, L., Trinity-villa, Abergavenny, Monmouthshire.
- Cousen, Geo., at Messrs. Rawson, George, and Wade's, Bradford, Yorkshire.
- Cowland, L., jun., Launceston, Cornwall.
- Crow, A., Mill-street, Market-rasen.
- Davis, F. J., of Tygwynne, near Cardigan.
- Dickin, T. P., at W. H. Cooper's, Esq., solicitor, Shrewsbury.
- Druce, H., No. 10, South-square, Gray's-inn, London.
- Fellows, W. H., Hoseley-house, Tipton, Staffordshire.
- Freame, R. S., Gillingham, Dorsetshire.
- Gale, G., No. 2, Bowling-lane, Hull.
- Gaskin, H., at M. Stevenson's, Esq., Chatham.
- Gratton, C. J., at J. Cutts', Esq., Chesterfield.
- Harris, S., at Messrs. Wartnaby and Fisher's, Market Harborough.
- Hartley, J., at R. Hunt's, Esq., Rochdale.
- Hausburg, L. P., Rosenfells, Much Woolton, near Liverpool.
- Hebb, K. H., at J. Moore's, Esq., Lincoln.
- Heelis, J., Barnard Castle, Durham.
- Hilditch, C., Tunstall, Staffordshire.
- Holloway, R. H., of Billericay.
- Homer, J., at J. Homfrey's, Esq., Halesowen, Worcestershire.
- Horsell, H., of Wootton Bassett.
- Horton, Mr., at Messrs. Lee, Penson, and Best's, Birmingham.
- Horwood, Thos., of Aylesbury.
- Howell, E. J., No. 4, Upper Larkhall-rise, Larkhall-lane, Clapham.
- Hutchinson, James, of No. 3, Horton-road, Bradford, Yorkshire.
- Jaques, E. A., Highbury-house, Burbury-street, Lozells, Birmingham.
- Johnson, G. J., at Messrs. Tyndale and Sons', Birmingham.
- Jones, John, Messrs. Kett and Co., 52, Lincoln's-inn-fields.
- Jones, Josiah, of No. 10, Corn-market, Worcester.
- Kinneir, H., of Barnfield-house, Southernhay, Exeter.
- Knowles, A., Yew-tree House, Brampton Moor, near Chesterfield.
- Lavender, P. W. S., 13, Bloomsbury-square, London.
- Leonard, W., at R. Leonard's, jun., Esq., Bristol.
- Lowes, J., at Messrs. Chatter's, Newcastle-upon-Tyne.
- Lumb, A., Lowther, near Penrith.
- Mann, W., 15, Princess-street, Manchester.

Michelmores, H., at T. W. Gray's, Esq., solicitor, Exeter.
 Millington, J. H., 15, East-street, Red Lion-square, London.
 Morris, H., of Llanelly.
 Mourilyan, J. N., jun., of Sandwich, Kent.
 Norton, A. H., at F. Sharpley's, Esq., Louth, Lincolnshire.
 Nunneley, H., of Boston.
 Owen, A. H., at E. L. Hesp's, Esq., Huddersfield.
 Pannett, R. E., of Whitby.
 Parry, R., County Court Office, Carnarvon, North Wales.
 Partridge, S. S., Highfield-street, Leicester.
 Peacock, T. J., at J. Cutts', Esq., Chesterfield.
 Peerless, J. R., East Grinstead.
 Peerless, W. A., East Grinstead.
 Perrin, S. H., Athenæum-chambers, Nicholas-street, Bristol.
 Pickering, G. E., of Aylesbury.
 Powell, G. W., 14, Featherstone-buildings, Holborn.
 Randles, W. H., at G. Salter's, Esq., Ellesmere, Shropshire.
 Riley, B. S., solicitor, 6, Brunswick-street, Liverpool.
 Rogerson, G. R., 4, Chapel-square, Liverpool.
 Rowell, R., at H. V. Mules', Esq., Honiton, Devon.
 Rowse, S. W., at S. Rowse's, Esq., solicitor, 23, Princess-street, Plymouth.
 Sampson, T., No. 78, Lowgate, Hull.
 Shacklock, T. H., Mansfield.
 Sims, J., of Harleston, Norfolk.
 Smith, F., St. John's Cottage, Colchester.
 Spencer, T., Messrs. Crowdy and Co., Swindon, Wilts.
 Stevens, W., of Sherborne.
 Summers, F., 12, Parliament-street, Hull.
 Sutcliffe, R., Brown-hill, near Burnley, Lancashire.
 Sykes, W. F., Carlisle.
 Taylor, J. O. H., of St. Giles's-street, Norwich.
 Taylor, W., of Hexham.
 Tree, J., 19, New-street, Worcester.
 Trotman, A. L., West-end, Wellingborough, near Northampton.
 Ward, E. A., at S. P. Brookes', Esq., solicitor, Tewkesbury.
 Ward, R., of No. 43, Noel-street, River-street, Islington, London.
 Watts, H. S., of Yeovil.
 Wells, James, at C. G. Brown's, Esq., Bilston, Staffordshire.
 Whiteford, H., at Messrs. Whiteford and Bennett's, solicitors, Courtenay-street, Plymouth.
 Williams, John, County Court Office, Carnarvon, North Wales.
 Wood, H., Yeovil.
 Woodram, T. B., at A. Horwood's, Esq., New-court, Temple.

We trust we shall shortly have to report a considerable addition to the above names, as at present the number is very small, compared with the large body of articulated clerks in town and country, and, indeed, as compared with the number which we formerly had the pleasure to publish. There surely must be many among the recent subscribers who will be anxious to avail themselves of the advantages of the correspondence system. There is no expense attendant on it: all that is required is, for any one to intimate a desire to have his name inserted in the list.

COUNSEL CONSENTING TO AMOUNT OF DAMAGES.—The Exchequer and Mr. Justice Willes, at Nisi Prius, have intimated that counsel have authority to bind their clients by agreement as to the amount of damages.

Vendors and Purchasers.

AUCTION.—*Sale without reserve*—*Duty of auctioneer*—*Agent*.—The case of *Payne v. Cave* (3 T. R. 148), decided that a bidding at an auction, instead of being a conditional purchase, is a mere offer that the auctioneer is the agent of the *vendor*, and the assent of both parties is necessary to the contract, and this assent is signified by knocking down the hammer, and that till then either party may *retract*. This is quite inconsistent with the notion of a conditional purchase by the bidding, and with the notion of there being any personal promise by the auctioneer that the bidding of an intending purchaser shall absolutely be accepted by the vendor—the vendor himself, and the bidder, being respectively free till the hammer is knocked down. The following case shows that the vendor may, before the hammer is down, determine the authority of the auctioneer to accept the offer of the highest bidder; it does not appear that there was a provision that the highest bidder should be the purchaser, but it was a sale “without reserve.” It was held, that where an article is to be sold by auction without reserve, and after a bidding is made and before the hammer falls the owner bids a higher sum, whereupon the article is bought in for him, the auctioneer is neither the agent of nor is it his duty to the bidder, to complete the contract on his behalf. *Warlow v. Harrison*, 7 Week. Rep. 138.

CONDITIONS OF SALE.—*Framing* [see 4 L. C. 367]—*Previous attempt to sell*—*Special conditions as to defects*—*Specific performance*—*Motion for decree*—*Rescission of contract* [see 3 L. C. 277].—The following case as to framing conditions of sale, and as to suits for specific performance, merit attention, and should be noted in our previous volumes in their appropriate places:—Where a suit for specific performance comes on on motion for decree, the Court of Chancery may treat it as a motion and refuse it with costs. On a sale by auction, it is not necessary to state a previous attempt to sell. Where, on a bill filed for specific performance by a vendor, circumstances not appearing on the abstract are discovered, raising a grave doubt of the fairness of the transaction; the Court of Chancery will dismiss the bill with costs. Where a vendor, selling by auction, knows of circumstances not appearing on the abstract, raising a doubt of the soundness of the title, and frames conditions to conclude a purchaser, the Court of Chancery will allow such purchaser, after answer and cause coming on on motion for decree, to raise such objections. Where a vendor sells under special conditions framed to meet a defect of title, he is bound, at the same time, to communicate to a purchaser circumstances within his own knowledge raising the question of such defect. Where there is a condition that a vendor shall be at liberty to rescind, in case he shall be unable or unwilling to answer a requisition or obviate an objection, that does not entitle him to rescind, on a bill filed by him for specific performance, where a decree is made against him, except upon the terms of paying the costs. He may also rescind by dismissing his bill with costs. Whether statutory declara-

tions form part of an abstract—*Quære?* *Warde v. Dickson*, 7 Week. Rep. 148.

DEPRECIATORY CONDITIONS OF SALE.—*Special condition—Mortgagor and mortgagee—Power of sale—Trustee—Misrepresentation—Abatement.*—A condition of sale, providing that in case any objection or requisition be made with respect to the title which the vendor is unwilling or unable to satisfy, the vendor shall be at liberty to rescind the contract on return of deposit without interest or costs, notwithstanding steps have been taken in the meantime to clear up such objections, is not depreciatory. A mortgagee with power of sale, giving him liberty to insert such special or other conditions as he may think proper, is at liberty to insert the above condition. Where a reversionary interest in money liable to abatement under the instrument creating it is payable out of residue, and is so stated to be in the particulars of sale, although it is not stated to be subject to abatement, yet if there be also sufficient to show that it is not the first charge, a purchaser cannot object that there was a misrepresentation on the ground that it was not said to be subject to abatement. *Falkner v. The Equitable Reversionary Interest Company*, 7 Week. Rep. 73.

GOOD TITLE.—*Question of fact uncertain.*—In the case of *Jakes v. White* (6 Ex. R. 873); it was held by the majority of the court, in an action by a purchaser against a vendor to recover his deposit money and expenses, that where a question arises between parties about to enter into the relation of vendor and purchaser as to the meaning of a good or sufficient title, there must be such a title as a court of equity would adopt as a sufficient ground for compelling a specific performance. However, in a previous case, the Court of Common Pleas held, that in such an action the court ought not to consider whether the title was of a doubtful description such as a court of equity would not compel an unwilling purchaser to take, but simply to determine whether the vendor had a good title or not; but this was a question of construction, and not of fact. And the same court has now decided that where in such an action the title to land is dependent on a question of fact which it is impossible to regard as reasonably certain, such a title ought not to be deemed a good or sufficient title as between a vendor and a purchaser. *Simmons v. Heseltine*, 7 Week. Rep. 133.

LEASEHOLDS.—*Sale of—Covenants, restrictive—Notice—Specific performance—Distinction between sale of a lease and subject to a lease.*—In the cases of the sale of a lease and a sale subject to a lease, the necessity of examination by a purchaser is stronger where he buys an actual lease than where he buys subject to a lease incidentally. Lord St. Leonards, in his *Vendors and Purchasers* (13th ed., p. 357), comments upon the cases relating to a purchaser being bound or not by the contents of a lease; in *Martin v. Cotter* (3 Jo. & Lat., p. 516) are the following observations:—“Sir William Grant carried the doctrine that notice of a lease is notice of its contents a long way in *Hall v. Smith* (14 Ves. 426), but in that case there was no mistake or misapprehension as to the subject-matter of the contract; there was nothing but a particular covenant, which was not stated. It might be dangerous to say that the rule laid down in

that case was universal in its application, for I can imagine a covenant in a lease which would so deteriorate the property as to destroy the interest of the seller in it; and the particulars might state some of the covenants, and omit that. Such a description might amount to fraud in the sale. I agree that if a purchaser has notice that the property is held under a lease, he cannot object that he had no notice of any particular covenant therein contained. He must look closely and be active in order to ascertain whether there is any such as would materially prejudice him," &c. These views have been acted on in the following case, where it appeared that leasehold property was put up for sale without any statement in the conditions of sale or otherwise as to the nature of the covenants contained in the lease. The lease contained a covenant against carrying on certain specified trades, or any other noisome or offensive trade. *V. C. Wood* held, that the purchaser was bound, and must be taken to have informed himself of the contents of the lease; and that he was not entitled to compensation or to be discharged from the contract by reason of the covenant against trade. *Grosvenor v. Green*, 7 Week. Rep. 140.

SPECIFIC PERFORMANCE.—*Mistake—Parol evidence.*—The following case illustrates the distinction between the non-admission of parol evidence where there is a written contract and the plaintiff seeks specific performance, and the case of a defendant resisting specific performance and setting up the parol variations (3 L. C. 63—65; 4 L. C. 54, 265). Defendant, a brewer, agreed to grant a lease to plaintiff, and after the terms had been discussed, a written agreement was prepared by defendant, and executed. The agreement did not expressly state that the lease was to be a usual brewer's lease, nor did it contain any stipulation that the plaintiff should take his beer of the defendant, although that had been the understanding in the previous parol treaty: Held, that plaintiff was not entitled to specific performance of the agreement unless he would consent to submit to the stipulation. *Barnard v. Cave*, 7 Week. Rep. 158.

CORRESPONDENCE ON MOOT POINTS.

ALTHOUGH not to so great an extent as could be desired, it is yet evident that the new system referred to at pp. 27, 28, is likely to be adopted by some of our Subscribers, as will appear from the additional names we now give. We have no doubt that, as our Subscribers increase, the lists will present a considerable addition, and, as we find the change in the publication is generally acceptable (indeed, to an extent greater than we had anticipated), we fully expect very many new Subscribers will be likely to become correspondents. We should, however, be pleased to have many more names from old subscribers, and we trust that, now a few have come forward, several others will send up their names for publication.

In consequence of some of the Moot Points arriving late in the month, we have not been able to forward all to the correspondents, but those sent

we are happy to say received attention, as will be seen by some answers which we have inserted. It is, of course, understood that we do not undertake to publish all the answers, but only a selection, though when the system is in full operation, by the adoption of sections, &c., we hope to be able to satisfy all.

Now is really the time for articulated clerks to put themselves forward in a good cause, not only benefitting themselves, but, by their example, influencing others. Those who exert themselves most in the correspondence will certainly reap the most benefit, and will be sure to experience the advantage thereof in their after-career. Indeed, it appears to us to be just the opportunity that articulated clerks should be glad to embrace with a view to ultimate results.

We should be glad if those sending Moot Points would append their names and addresses, even though not regular correspondents, because occasionally it happens that those who are trying to answer the points find some omission or matter upon which they would like information, and if the particulars mentioned were supplied the mooters could be written to.

The following is a correct list up to the present time of the correspondents under the *New System* :—

Mr. W. W. Aldridge, T. Goater, Esq., solicitor, Southampton; Mr. F. A. Cole, Hales Owen, near Birmingham; Mr. T. D. Goodman, Messrs. Challinors, solicitors, Leek, Staffordshire; Mr. F. Hartley, 15, Bank-house-street, Burnley; Mr. C. Houghton, Messrs. Bickerstaff and Myers, solicitors, Preston; Mr. Henry E. Hunt, 15, Great James-street, Bedford-row, London, W.C.; Mr. C. Jupp, 8, New-inn, London; Mr. C. Kirby, jun., C. Kirby, Esq., solicitor, Knaresborough; Mr. S. S. Partridge, Highfield-street, Leicester; Mr. J. F. Peacock, J. Cutts, Esq., solicitor, Chesterfield; Mr. G. R. Rogerson, Messrs. Rogerson and Peacocks, solicitors, 4 Chapel-street, Liverpool; Mr. S. W. Turner, Bank-street, Sheffield.

The following is to be added to the list on the *Old System* at pp. 31, 32—viz., Mr. J. Bryan, J. Lovegrove's, Esq., solicitor, Gloucester. Mr. M. G. Booty, H. T. Robinson, Esq., Leyburn, Yorkshire. To Mr. Cooper's name at p. 31, add "*solicitor*."

If we have omitted any names from the new or old lists, we shall be happy to supply the deficiency in our next.

It would be a great improvement if Moot Points were sent early in the month, as there would then be time for their circulation among all the correspondents.

Moot Points.

No. 4.—*Conveyance in Name of Husband and Wife.*

A., for a valuable consideration paid by B., conveys freeholds to B. and C. (who are husband and wife) to such uses as C. should appoint, with a

limitation to B. and C., and the survivor of them for life, with remainder to C. in fee. C. died some years ago without having executed her power, neither did she in her lifetime deal, nor has her heir-at-law since her death in any manner dealt, with the property. B. has recently contracted to sell the premises in fee. Can B. alone make an effectual conveyance of the premises? and would a court of equity decree a specific performance of the contract by the purchaser? The vendor contends that the conveyance to himself and his deceased wife was voluntary, and that in consequence the property belongs to himself absolutely.

TEMPLARIUS.

No. 5.—*Bequest among Relations or Next-of-Kin.*

A testator directs his trustees to divide a sum of money amongst *such of his relations or next-of-kin of the first or second degrees of blood* as they should think fit. The testator had no lineal relations whatever either at the date of his will or subsequently, but he had half-sisters (his father's children by a second marriage) and several nephews and nieces of the whole blood. The trustees consider that they will best effectuate the testator's intentions if they divide the money between the nephews and nieces, to the total exclusion of the half-sisters (with whom the testator never was on friendly terms). Will they be justified in so doing, the nephews and nieces coming only within the specified degrees of *collateral* blood.

TEMPLARIUS.

No. 6.—*Mortgage—Advance by Husband and Wife.*

A., in consideration of a sum of money advanced to him by B. and his wife, conveys an equity of redemption in freeholds to C. in fee, upon trusts for sale in case of default. A. has since sold the premises, subject to the first mortgage. It is intended that the second mortgage should be discharged, and that B. and his wife, and C., their trustee, should join in the conveyance; and the mortgage money is expressed in the draft conveyance, which has been prepared, to be paid to B. and his wife, who direct C. to convey, and they themselves remise, release, and quit claim. Has the wife such an "interest, charge, lien, or incumbrance in, upon, or affecting lands, either at law or in equity" (I quote from the interpretation clause of the Fines and Recoveries Act) as to make it necessary for her to acknowledge the deed?

VENATOR.

No. 7.—*Forfeiture, Corruption—Execution of Old Will.*

I have met with the following in my reading, and should be glad if any of your correspondents could give me a satisfactory explanation. "In cases where by statute corruption of blood is prevented in high treason, the forfeiture of lands and goods still continues." "A will, prior to the new act, need not have been signed by the testator in the presence of the witnesses;" yet, by s. 6 of the 29 C. 2, c. 3, a revoking will appears to have been required to be signed "in the presence of three or four witnesses." What was the construction put on this section, and *vide* the terms of s. 5, signed by "the testator, or by some other person, in his presence."

H. W.

No. 8.—Mortgagor being Solicitor—Notice.

A mortgagor, who was a solicitor, gave an equitable mortgage by memorandum, with deposit of title-deeds, to A. He then gave a legal mortgage of the same property to B., but no deeds were delivered over, or anything said about them. In each transaction the mortgagees had no separate solicitor, but, of course, the mortgagor made no charge for preparing the instruments. Is the second mortgagee entitled to priority over the first; or must he not be considered as having notice of the equitable memorandum and deposit, and therefore be postponed to such deposit, especially as the deposit has the deeds, and the second mortgagee neglected to obtain them.

LEX.

No. 9.—Lease—License to Assign.

A. grants a lease of a certain messuage to B. for a term of ten years. B. covenants not to underlet or assign for any part of the term without a license in writing from A.

B. applies to A. for a license enabling him to assign to C. for the remainder of the term, which A. gives him in writing. What is the effect of this license on the covenants on the part of B., contained in his lease? Is he thereby relieved from them, or such of them as run with the land?

The mooter has searched in vain for a case on the point, and would, therefore, be glad to have an opinion.

If the lessee had assigned *without a license*, it is very clear he would still remain liable under the covenants; but, having acted merely as the simple instrument of A. in vesting in C., his accepted tenant, the legal interest in the remainder of the term, is he, notwithstanding, also liable?

W. M. SHERRING.

Answers to Moot Points.

1.—County Court Warrant—Guernsey (ante, p. 28).

The Channel Islands are governed by their own laws, and English writs, except prerogative writs, do not run there; B., therefore, cannot be arrested at Guernsey on an English commitment. It appears to me that the best mode of bringing B. to justice will be by suing him in the Guernsey courts under a power of attorney in the same way as persons resident in a foreign country are sued by persons domiciled in England; or the county court judgment may be removed into one of the superior courts, and the plaintiff may proceed to outlaw B.

TEMPLARIUS.

No. 1.—County Court Warrant—Guernsey (ante, p. 28).

R. J. B. does not give the amount of plaintiff's claim against B., but I presume it exceeds £20. B. is out of the jurisdiction of the county court,

and plaintiff's only chance is to proceed under the 19 & 20 V. c. 108, s. 49, for a *certiorari* to remove the judgment of the county court into one of the superior courts, when it will have the same effect as if an action had been first commenced in such superior court.

S. W. TURNER.

2.—*Bankruptcy—Petitioning Creditor—Execution* (*ante*, p. 28).

The intent of a *ca. sa.* is, that the debtor should remain in prison until the judgment be satisfied, and a creditor, after taking the body of his debtor in execution, cannot take any other proceedings against his estate, the imprisonment operating as a satisfaction unless the debtor be discharged from custody without the sanction of the detaining creditor. In the case put, I am of opinion that B., having elected to imprison A. instead of at once making him a bankrupt, adopting the assignment for benefit of creditors as the act of bankruptcy, cannot now act in the way he desires.

The effect of the imprisonment on the deed of assignment will probably be to avoid it by forcing A. to become a bankrupt in order to obtain his release from prison.

TEMPLARIUS.

No. 4.—*Conveyance in Name of Husband and Wife* (*ante*, p. 36).

It seems that B. could not make a valid conveyance of the property in question, as he has only a life interest. To say the least of it, there is a reasonable doubt upon this point, and in *Pyrke v. Waddingham*, 10 Hare, 1 (which case may also be found in the digest of the *Law Journal Reports*, 1850—1855), a doubtful title which a purchaser will not be compelled to accept is shown to be not only a title upon which the court entertains doubts, but includes also a title which, although the court has a favourable opinion of it (which nevertheless it is unable to found upon any general rule of law), yet *may reasonably and fairly be questioned in the opinion of other competent persons*; for the court has no means of binding the question as against adverse claimants or indemnifying the purchaser in its own opinion in favour of the title should turn out not to be well founded. Bearing in mind these facts, I have no hesitation in saying that B. could not enforce specific performance of the contract by the purchaser.

There is nothing to show that B.'s contention as to the conveyance to himself and his wife being voluntary is a valid one, but the contrary; and even if it were, I do not see how that could affect the question.

T. D. G.

Note.—As this answer contains useful matter we insert it, but the real point has not received attention. Is it not the case of a purchase by a husband in the name and for the benefit of his wife?

EDS.

No. 5.—*Bequest among Relations or Next-of-Kin* (*ante*, p. 37).

The meaning or intention in this instance should be gathered from the will alone, irrespective of the testator's known prejudices, and therefore the trustees would not be justified in dividing the money amongst the nephews and nieces, to the exclusion of the half sisters. Probably the nephews and

nieces might respectively stand in *loco parentis* and the money be distributed to the half sisters *per capita*, and to the former *per stirpes*. T. D. G.

No. 6.—*Mortgage—Advance by Husband and Wife* (*ante*, p. 37).

I think the wife has such an interest as to make it necessary for her to acknowledge the deed in order to make the same valid, where the sale is under a compulsory power in a statute an acknowledgment is not necessary; but in this case the husband and wife are made parties to the deed, therefore it is necessary that she should acknowledge the deed (8 & 9 V. c. 106; 7 Com. Ben. Rep. 120; 20 & 21 V. c. 57. S. W. TURNER.

No. 6.—*Mortgage—Advance by Husband and wife* (*ante*, p. 37).

I am inclined to the opinion that the interest of B. and his wife would be considered personalty (*vide* LAW CHRONICLE, vol. 2, p. 229); and if so, B., during the life of his wife, might absolutely dispose of her interest (*vide* Watkins' Prin. of Conveyancing, 9th edit., p. 431), the legal estate (if any) vesting in C.

I do not, therefore, think there is any necessity for B.'s wife to acknowledge the deed. I, however, express this opinion with considerable diffidence, and shall be glad to see the opinion of others on this point.

T. F. P.

No. 7.—*Forfeiture—Execution of Will* (*ante*, p. 37).

For information on this subject, I would refer your correspondent to vol. i. Stephen's Commentaries, p. 595, 4th ed., and cases cited. T. D. G.

No. 8.—*Mortgagor being Solicitor* (*ante*, p. 38).

Although on the authority of *Hewitt v. Loosemore*, 9 Hare, 449, where a mortgagor is a solicitor, and acts for himself in the mortgage, there is a constructive solicitorship in the transaction, yet in a recent case (*Espin v. Pemberton*), it was decided by Kindersley, V. C., that *it was not constructive notice to the mortgagee of a prior mortgage effected by the mortgagor*, nor does it appear to me that, as the question stands, there is sufficient evidence of negligence on the part of the second mortgagee to cast on him the imputation of fraud. Therefore I am inclined to think that the second mortgagee would be entitled to priority over the first. W. W. A.

No. 8.—*Mortgagor being Solicitor* (*ante*, p. 38.)

Although, in the case put by "Lex," the mortgagor must be deemed to be B.'s solicitor, yet the latter will not therefore be considered as having notice of the equitable memorandum and deposit, nor of any other uncommunicated fact which it was the interest of the solicitor as mortgagor to conceal. Still, B., the legal mortgagee, ought to have made inquiry for the title-deeds, and having failed to do this, it appears, from the case of *Hewitt v. Loosemore* (21 L. J. Ch. p. 69, and 9 Hare, 449) he will be postponed, and the equitable mortgagee will have the priority. In the case

already referred to (*Hewitt v. Loosemore*), *Turner, V. C.*, after going fully into the case before him, says, "The law, therefore, as I collect it from the authorities, stands thus: that a legal mortgage is not to be postponed to a prior equitable one, on the ground of not having got in the title-deeds, unless there has been fraud, or gross and wilful negligence on the part of the legal mortgagee, and that court will not impute such fraud or negligence to him if there has been a *bonâ fide* inquiry after the deeds, and a reasonable excuse given for non-delivery of them; but that the court will impute fraud or gross and wilful negligence to him if he omits all inquiry as to the deeds."

T. D. G.

No. 8.—*Mortgagor being a Solicitor—Notice (ante, p. 38).*

I think B. had sufficient notice, therefore he has no priority over A., B. not inquiring for and obtaining the deeds is quite sufficient notice alone. A mortgagee not inquiring for the deeds was postponed to a prior equitable incumbrancer upon the ground of his having purposely abstained from making inquiry, the mortgage being for securing a pre-existing debt; that, in short, there was wilful blindness. And it has been held that the mere omission to ask for the deeds is sufficient to postpone a mortgagee or purchaser to the equitable lien of the actual holder. Neither can A. be compelled to produce the deeds until his money be paid; and in 1 Y. & C. 107, Lord Kenyon is said to have advised a mortgagee to put his deeds into a box, and sit upon it, until the money was put into his hands (*Hiern v. Mill*, 13 Ves.; *Dryden v. Frost*, 3 Myl. & C. 670; 1 Ha. 61; *Worthington v. Morgan*, 16 Sim. 547; see *Sugden*, 1055; *Whitbread v. Jordan*, 1 Y. & C. 303, 1 Ph. 255; *Hewitt v. Loosemore*, 9 Ha. 449—458).

S. W. TURNER.

No. 8.—*Mortgagor being Solicitor—Notice (ante, p. 38).*

In this case, I do not think the mortgagor can be considered to have been acting professionally for either A. or B.

A. is, in my opinion, guilty of laches in not obtaining possession of the deeds which B. is now legally entitled to claim. In this case I think the equities are so fairly balanced that the law must prevail, and that A. is not entitled to priority over B., the legal mortgagee.

T. F. P.

Articled Clerks.

BANKRUPTCY OF ATTORNEY [Pract. C. L. 16].—*Assignment of articles*, 6 & 7 V. c. 73, s. 5.—The Solicitors' Act, 6 & 7 V. c. 73, s. 5, enacts that, in case any attorney to whom any clerk shall be bound, becomes bankrupt, &c., before the contract has expired, it shall be lawful for any court of law or equity wherein such attorney is admitted, to order the contract to be discharged "or assigned to such person upon such terms, and

in such manner as the said court shall think fit." In the following case (which should be noted in Pract. C. L. p. 16) where it appeared that an attorney had become bankrupt and gone abroad, but before going gave a power of attorney authorising an assignment of articles of clerkship, the court, upon application of the clerk under 6 & 7 V. c. 73, s. 5, ordered the assignment to be made. *Exparte Ellis*, 7 Week. Rep. 61.

INROLMENT.—*Neglect to inrol in due time.*—*Service allowed to date from execution of articles*—Stamp—19 & 20 V. c. 81, s. 3.—The following decision is opposed to that of *exparte Hughes*, stated 5 L. C. 204, 205, and is worthy of attention. It appeared that a clerk was articulated in 1842 to his father, who died in 1845. Three months after the death it was discovered that the articles had never been stamped. The omission could not be accounted for; but it was not occasioned by any default on the part of the clerk, who, till the discovery referred to was made, believed them to have been stamped. In 1858, they were stamped under 19 & 20 V. c. 81, s. 3. Held: That the service of the clerk was to be allowed to be computed from the date of the execution of the articles. *Exparte Fenton*, 7 Week. Rep. 160.

OPPOSITION TO SWEARING IN.—*Disclosure of information obtained as clerk.*—Where, upon the opposition by the master of an articulated clerk to the clerk being sworn in as an attorney, upon the ground that he had disclosed information obtained as clerk, the charge was indistinctly stated in the affidavit, the clerk was at once allowed to be sworn. *Re* ———, 7 Week. Rep. 62.

Summary of Decisions.

EQUITY AND CONVEYANCING.

ARBITRATION.—*Jurisdiction of equity ousted—Condition precedent—Complicated accounts—Building contract, certificate of engineer.*—Though an agreement to refer to arbitration does not oust the jurisdiction of the court, yet, if the agreement is for the determination of the claims and liabilities of the parties by some particular person, no litigation can arise until he has decided, except it were shown that he fraudulently decided or abstained from deciding. S. contracted to execute works for L. It was provided that, in certain events, L. might terminate the contract, when H., an engineer, was to fix what amount had been earned by S., who was not to be entitled to any payment until certificate of H.; there was also a general clause making H. arbitrator in case of dispute. Held: Upon such determination of the contract by L., that (under the former clause) S. was not entitled to sue in respect of work done under it until H. made his certificate, no fraud being imputed. *Scott v. The Corporation of Liverpool*, 7 Week. Rep. 153.

WILL.—*Construction—"Ready money"* [4 L. C. 210].—The following may be added to the numerous cases as to what passes by the words "ready

money" in a will :—Under a gift of " After my funeral and testamentary expenses are paid, all my ready money : " Held, that cash in the house at the time of the testator's death, and a balance at the savings' bank, for the withdrawal of which notice had been given, passed under this bequest, but not money secured by note of hand. *Re Powell*, 7 Week. Rep. 138.

EQUITY PRACTICE.

COSTS.—*Injunction suit*—*Offer to pay costs and perform what plaintiff required.*—The following case offers a useful suggestion on behalf of defendants willing to comply with plaintiffs' claim and desiring to put an end to a suit. In a suit to restrain the use of plaintiff's trade label, an injunction was granted on motion, after which the defendant offered to consent to a perpetual injunction, but made no offer to pay the costs : Held, that the plaintiff was entitled to bring the suit to a hearing for his costs, but *semble*, if defendant had offered to pay the costs up to the time of the offer, the subsequent costs would have been thrown on the plaintiff. *Burgess v. Hill*, 7 Week. Rep. 158.

ENROLMENT OF DECREE [F. Bk. 290 ; 5 L. C. 13, 200].—*Extension of time.*—Although the court is disposed to take a lenient view of circumstances, which may have prevented an appeal from being prosecuted within five years, yet after that time it is desirable that the orders as to enrolment, &c., should be strictly adhered to. A decree was made in 1849, and an order on further directions in March, 1853. In 1854 the plaintiff enrolled the former order. In 1858 a decree was made in another suit, which was considered favourable to a defendant in this suit ; and he applied to enrol the order of March, 1853, as the five years had so recently expired, and he had been for some years resident out of the kingdom ; but the court refused the application. *Wellesley v. Wellesley*, 28 Law Journ. Rep. Ch. 1.

FORECLOSURE.—*Order absolute*—*Receipt of rents before affidavit made*.—*Further account.*—Default was made by the mortgagor on the day fixed by the certificate for the payment of principal and interest under a decree in a foreclosure suit. The mortgagee, subsequently to default made, and before making his affidavit in support of the motion to foreclose absolutely, received some of the rents. Order for absolute foreclosure granted without directing a further account. *Constable v. Howick*, 7 Week. Rep. 160.

LEASES AND SALES OF SETTLED ESTATES ACT.—*Appointment of guardian ad litem for infant petitioner*—*Time of.*—A guardian ad litem for an infant petitioner under the Leases and Sales of Settled Estates Act, may be appointed at any time after the presentation and before the hearing of the petition. *Re Hargreave's Settled Estates*, 7 Week. Rep. 158.

NE EXEAT REGNO [1 L. C. 416, 440 ; F. Fk. 46].—*Insolvency—Protection—Costs.*—The purpose of a writ of *ne exeat regno* is to prevent the debtor from going out of the jurisdiction of the Court of Chancery until the debt claimed is satisfied ; and it only operates on the debtor's person, not on his property, in order that his person may be kept within such

jurisdiction, on the ground that he is a debtor, and that he may not escape from payment of the debt. In the following case it was held, that where a writ of *ne exeat regno* has been issued against a defendant, and he obtains protection under the Insolvent Debtors' Act, the court will discharge the writ on the terms of releasing the party obtaining the writ from his undertaking to be answerable for damages, and against all actions, &c., on the defendant's behalf, and on payment of the costs of the motion to discharge the writ. *James v. North*, 7 Week. Rep. 156.

SECURITY FOR COSTS.—Misdescription.—The following may be noted in 3 L. C. 93, 128, 297, 318; 4 L. C. 263, 379. If a plaintiff describing himself as of a particular place is not to be met with at that place, although he has no other fixed residence, and that may not so far be a misdescription, yet he must give security for costs. If a plaintiff states that he "occupies and rents apartments," and that his family reside at a place named, that is not a statement that he resides there. *Oldale v. Whitehead*, 7 Week. Rep. 157.

COMMON LAW.

EVIDENCE.—Hearsay.—Public Highway — Map — Reputation.—No hearsay evidence is admissible as reputation to prove anything less than a public right, but it has been contended, that any evidence which has a tendency to prove such a right is admissible, but that is not a correct proposition. It has also been said that you may show, in the first place, by this kind of evidence, that there is a way. But that is not so; hearsay evidence must be confined to the showing that there is a public right to use the way, and you cannot by hearsay evidence prove that which is the preliminary point. In the following case, in order to prove that there was a public right of way over and along certain closes which were part of a manor, the defendant put in evidence a map which had been used by a deceased steward of the manor at the manor courts for the purpose of defining the copyholds. In it there appeared a space marked out by two lines crossing the closes in question and called Mellow-lane. There were occupation-ways as well as public highways marked upon the map, but there was nothing to distinguish one from the other, nor was there anything to show the space marked out as above mentioned was a public highway at all: Held, that the map was inadmissible. *Pipe v. Fulcher*, 28 Law Journ. Rep. Q. B. 12.

MASTER AND SERVANT.—Agreement—Condition precedent—Temporary illness no forfeiture of wages.—The following case is one of some importance as establishing or rather recognising the rule that on contracts between masters and servants absence from service by reason of temporary illness is no reason for refusing to pay the servant his wages: the servant may be considered as having been ready and willing to serve, but prevented by the visitation of God. Permanent illness might be a reason for rescinding the contract, and so freeing the master from any further liability. As the court said, "Want of ability to serve for a week is not of

necessity an answer to a claim for a week's wages." It appeared that the plaintiff agreed to serve the defendant for ten years as a brewer, to observe his commands and keep his secrets; and the defendant agreed to pay the plaintiff £20 on the execution of the agreement, to provide him a house and coals during the ten years, and to pay him the weekly sum of £2 10s. during the same period: Held, to a claim for weekly wages during part of the period, that a plea that the plaintiff was not, during such part, ready, willing, or able to and did not in fact render the agreed service, meant that he wilfully refused to render it, and that the plea was therefore good. Held also, to the same claim, that absence from service by reason of temporary illness was no answer. *Cuckson v. Stones*, 7 Week. Rep. 134.

NEW TRIAL.—Contract—Verdict—Nominal damages not matter of computation.—Where, in an action of contract, the damages are not mere matter of computation, and there is any view upon which the jury might not unreasonably consider that there was a breach of contract, but no substantial damage, a verdict for the plaintiff for merely nominal damages will not, especially if the matter in dispute is only a small sum, be set aside. *Nichol v. Bestwick*, 28 Law Journ. Rep. Ex. 4.

SET-OFF.—Joint and several promissory note.—In Chitty on Contracts (752, 6th edit., note b.), 2 Pothier, by Evans, 68, is referred to, as to a set-off in the case of a joint and several obligation, where one debtor only is sued, and the plaintiff is indebted to the other debtor, and it is said: "I am not aware of any authority that if one debtor has actually set-off a separate debt of his own against a joint and several debt of himself and others, that this could be taken advantage of by the others, in any action instituted against them; although it is certainly reasonable that such a set-off should, in all respects, be regarded as a payment; and this observation applies more forcibly to the case where the creditor has set-off the joint and several debt against a demand due from himself to one of the debtors." And in *Fletcher v. Dyche* (2 T. R. 32), Ashurst, J., says: "I the parties have entered into a joint and several bond, it becomes the separate debt of both, and, therefore, may be set off against either." It has been decided that to a debt due from the defendant to the plaintiff, the defendant may set-off the plaintiff's joint and several promissory note payable to the defendant. *Ewen v. Wilkinson*, 28 Law Journ. Rep. C. P. 3.

STATUTE OF LIMITATIONS [21 Jac. 1, c. 16, 9 G. 4, c. 14, s. 1].—**Acknowledgment—Petition for Protection to the Court of Bankruptcy.**—A petition to the Court of Bankruptcy under the 7 & 8 V. c. 70, signed by an insolvent, in which he states that he is unable to meet his engagements, and, after setting out his debts, &c., proposes, for the future payment or compromise of his debts and engagements, to assign all his estate and effects to be applied, as far as they will extend, in full satisfaction thereof, is not an acknowledgment of a debt set out in the schedule sufficient to take the case out of the operation of the Statute of Limitations. *Everett v. Robinson*, 28 Law Journ. Rep. Q. B. 23.

WITNESS.—Subpoena by both parties—Right to recover costs—Payment by

successful party, and repayment by the witness.—The plaintiff was subpoenaed as a witness by both parties in a cause of B. v. E. In consequence of B.'s subpoena he remained in attendance for eleven days. E. obtained the verdict at the trial, and the plaintiff called upon B. to pay his expenses, which B. refused to do. The attorney for E. then paid the demand, upon an understanding that the plaintiff should return to him any part which the master might strike off, upon taxation. At the taxation the attorney swore that he had paid the plaintiff the whole sum demanded, but, at the instance of B., the master struck off a certain portion, which the plaintiff accordingly returned, and then brought an action against B. to recover that amount: Held, that he was not prevented from recovering in the action by reason of his repayment of the sum which he had first received from the attorney for E. *Halls v. Bates*, 28 Law Journ. Rep. Q. B. 14.

COMMON LAW PRACTICE.

ARREST.—*Judge's order to hold to bail—Variance in cause of action—Application to rescind order—Seaman's wages—Merchant Shipping Act, 1854, s. 189—Ousting jurisdiction of superior court.*—Where the plaintiff has obtained a judge's order to hold to bail, the court will not (at least, before declaration) rescind such order, upon the ground that the cause of action on which the plaintiff must proceed is different from the cause of action stated in the affidavit to hold to bail, if the court is satisfied that the plaintiff has a cause of action, and that process of the court has not been abused with the view of having the defendant arrested. *Burns v. Chapman*, 28 Law Journ. Rep. C. P. 6.

AUDITA QUERELA.—*Stay of proceedings—Security for costs.*—Costs may be recovered in *audita querela*, and a stay of proceedings ordered, unless security for costs be given. *Holmes v. Pemberton*, 7 Week. Rep. 160.

COSTS.—*C. L. P. Act, 1852, s. 18—Service out of jurisdiction—Taxation of costs.*—A defendant, being out of the jurisdiction, and personally served with a writ under the C. L. P. Act, 1852, s. 18, is liable to the expense attending such service, or reasonable efforts to serve him, and the question as to the amount must be raised before the master on taxation of costs with the proper materials for that purpose. *White v. Brett*, 28 Law Journ. Rep. Ex. 82.

SEAMAN'S WAGES.—*Under £50—Not recoverable in superior courts—Arrest—Foreign ship.*—By the Merchant Shipping Act, 1854, s. 189, no proceeding for the recovery of wages under £50 is to be instituted by any seaman in any superior court of record. Where a seaman of a foreign vessel, which had come into a British port, had obtained an order to hold the owner of such vessel to bail for wages under £50, the court refused, on application before declaration, to rescind such order for want of jurisdiction, as the application was premature, and as it was at least doubtful whether the 189th section applied in such a case to a foreign vessel. *Burns v. Chapman*, 28 Law Journ. Rep. C. P. 6.

WITNESS.—*Commission to examine witnesses abroad—Information ob-*

tainable in England [see C. L. Pract. 172—175].—It is no answer to an application for a commission to examine witnesses abroad (supported by the ordinary affidavit) that the opposite party deposes that there are persons in this country, and documents accessible to the applicant, which would supply him with any information he could obtain from the witnesses he proposes to examine. And after the judge has exercised his discretion on such an application, the court will not disturb his decision, unless it is manifestly wrong. *Adams v. Cornfield*, 28 Law Journ. Rep. Ex. 31.

PROBATE AND DIVORCE.

ALIMONY.—*Pendente lite*—*Principles on which it is allotted.*—In the Ecclesiastical Court one-fifth of the husband's net income was usually allotted as alimony *pendente lite*, and was made payable from the date of the return of the citation, the statement in the husband's answer to the wife's allegation of faculties being assumed to be correct unless the wife disputed it and examined witnesses. The outlay on permanent improvements, such as reinstating dilapidated buildings, should not be deducted from income, but should be charged on capital. The husband is liable for necessities supplied to his wife pending the suit, and before the decree of alimony, but he is liable only to a reasonable amount, and, therefore, if the wife during that period incurred debts to an extravagant amount, that circumstance cannot be taken into account as a ground for diminishing the amount of alimony. Where £50 has been paid on account of alimony *pendente lite* before the decree, the court made the sum allotted payable from the date of the decree instead of from the date of the return of the citation. *Hayward v. Hayward*, 28 Law Journ. Rep. P. M. C. 9.

APPEAL.—*From a decision of the Judge Ordinary—Mode of hearing.*—On appeal from the decree of the Judge Ordinary, in a suit for judicial separation, the cause will not be re-heard, but the facts will be assumed to be those appearing on the judge's notes. *Curtis v. Curtis*, 28 Law Journ. Rep. P. M. C. 8.

DISSOLUTION OF MARRIAGE.—*Practice—Wife's costs de die in diem.*—In a suit for dissolution of marriage, the wife is entitled to her costs *de die in diem*. *Webb v. Webb*, 28 Law Journ. Rep. P. M. C. 11.

DISSOLUTION OF MARRIAGE.—*Dispensing with personal service.*—20 & 21 V. c. 85, s. 42—*Rule 10.*—A wife filed a petition for dissolution of marriage, but was unable to effect personal service of the citation, &c., in consequence of the respondent having gone abroad, but whither she knew not. A. knowing where the respondent was, though refusing to give his address, forwarded to him, by post, an office copy and a plain copy of the petition, and two copies of the citation. The respondent returned, by post, to A., the plain copy of the petition and one of the copies of the citation, on which were indorsed memoranda, signed by him, acknowledging the receipt of the office copy of the petition, and also a copy of the citation. The respondent not having entered an appearance, the Judge Ordinary allowed the petitioner to proceed without further service. *Chandler v. Chandler*, 28 Law Journ. Rep. P. M. C. 6.

JUDICIAL SEPARATION.—*Desertion—Offer to return*—20 & 21 V. c. 85, s. 16.—A husband had deserted his wife without cause. Some years afterwards, but prior to the Divorce Act coming into operation, he made an offer, which was refused by her, to return to cohabitation. The wife petitioned for a judicial separation by reason of his wilful desertion. Held: That the husband, having made an offer to return at a time when desertion was not an offence cognisable by the ecclesiastical courts, and his offer being then refused by the wife, the offence of desertion had not been completed within the meaning of the 16th section of the Divorce Act. *Brookes v. Brookes*, 7 Week. Rep. 143.

CRIMINAL LAW.

FALSE PRETENCE.—*By means of innocent agent.*—J. B. was one of many persons employed, whose wages were paid weekly at a pay-table. On one occasion, when J. B.'s wages were due, the prisoner said to a little boy, I will give you a penny if you will go and get J. B.'s money. The boy innocently went to the pay-table and said to the treasurer, I am come for J. B.'s money, and J. B.'s wages were given him. He took the money to the prisoner, who was waiting outside, and who gave the boy the promised penny: Held, that the prisoner could not be convicted on the charge of obtaining the money from the treasurer by falsely pretending to the treasurer that he, the prisoner, had authority from J. B. to receive his money, or of obtaining it from the treasurer and the boy by falsely pretending to the boy that he had such authority, or of obtaining it from the boy by the like false pretence to the boy; but that he might have been convicted on a count charging him with obtaining it from the treasurer by falsely pretending to the treasurer that the boy had the authority from J. B. to receive the amount. *The Queen v. Butcher*, 28 Law Journ. Rep. M. C. 14).

SUNDAY TRADING ACT [see 1 L. C. 136; 2 L. C. 119].—18 & 19 V. c. 118, s. 2—*Sale of beer, &c., during certain hours of Sunday—Traveller.*—It is a question of fact, what is "a traveller" within the exception of 18 & 19 V. c. 118, s. 2, by which licensed victuallers are not allowed to open their houses for the sale of beer, &c., between the hours of three and five on Sunday, except to a traveller; but a person is not less a traveller, within the meaning of such exception, because he travels for pleasure. A party of persons left, on a Sunday afternoon, the town of L., in a vehicle for pleasure, and after driving a round of eight to ten miles, arrived at the inn of a licensed victualler at G., which is a statute about five miles from L., where they were served with beer and refreshments between the hours of three and five. None of the persons lived at G.: Held, that, on these facts, the justices ought not to convict the victualler under the 18 & 19 V. c. 118, s. 2, as the persons whom he had so served were travellers within the meaning of the exception to that section. *Atkinson v. Sellers*, 28 Law Journ. Rep. M. C. 12.

Debating Societies.

THE BIRMINGHAM LAW STUDENTS' SOCIETY.

At the twelfth annual meeting of this society the President, T. C. Sneyd Kynnersley, Esq., commenced the business by reading a very interesting address, of which the following is an abstract. In congratulating his hearers on their position as members expectant of an honourable profession, and as members of the society whose anniversary they were met to celebrate, Mr. Kynnersley remarked that everything which he had seen or heard led him to believe that a brotherhood such as they had formed, conducted as it had been, must necessarily lead to the best results. The avowed and primary object of the society was doubtless to advance the legal knowledge of the members by the discussion of professional topics. So far as he had enjoyed the means of judging, the choice of subjects was, in general, wisely and happily made, and well calculated not only to sharpen the wits—those weapons on which the students would have to rely in the great tournament hereafter to be played—but also to enable them to lay up in store resources for the time to come, so that they might be prepared to enter every possible field of encounter, and always feel at home, and masters of the situation, whenever and wherever they might gird themselves for the fight. One proof of the advantages to be derived from the privileges afforded by the society was the fact that, at the examination in Michaelmas Term, one of its members was recommended by the examiners for honorary distinction, and received from the Council of the Incorporated Law Society the prize placed at their disposal by the Honourable Society of Clement's Inn. But the impulse thus given to study was not the only benefit to be derived from the institution. The moral effect which might be expected from it was quite as valuable as that derived from helps to a study of the law. By associating in the society students formed acquaintances and attachments, came to know each others' character, discussed not only principles and points of law, but rules of action, and learned to attach disgrace to whatever is mean or dishonourable in practice. Association laid the foundation of a standard of high principle, and in after-life the mere fact of having been associated together would, to those who had enjoyed that privilege, be a guarantee for candour and fair dealing in professional transactions. Turning from local and personal to general topics, Mr. Kynnersley next contrasted the position of an attorney at this day with what it was twenty-five years ago, and pointed out the great stride made by the profession intellectually, socially, and in the class of business open to it. The examination, now compulsory, before admission to the ranks of the profession, had done much good, not only in securing a higher degree of legal knowledge, but in making requisite a more liberal general education than was thought necessary in the days when an attorney's Latin was on a par with a chemist's, and the classical ears of a judge in chambers, or of counsel in court, were shocked at applications for "*two manduni*," or the entry of a "*nolle prosequi*," and when a

man entrusted with a case of copyright or piracy might be more ignorant of his own language and the history of his own country than the smallest boy in the national school of his village. This change was of itself calculated to raise the position of attorneys, but independently of this, the same tendency characterised all the recent alterations in the mode of administering the law. Thirty years ago there was scarcely an opportunity for an attorney to open his mouth. Look at the case now. What a field was open to attorneys in the county courts. Questions involving the most abstruse and intricate points of law—almost everything which can arise under the head of contract or *tort*—are every day discussed, and a man needs be well prepared on all points who is to hold his own there. The short, sharp, and decisive action of the county courts admits of no elaborate preparations, there are no “pleadings” to open the advocate’s eyes to emergencies, and the readiest man, and he who can best handle his weapons, will soon distance his competitors. Then the bankruptcy courts had been opened to attorneys, and were almost monopolised by them; there were the revising barristers’ courts, of which attorneys have an entire monopoly; and lastly, there were the tribunals in which he was most deeply interested—the courts of petty sessions, in which numerous classes of cases were now disposed of which were formerly tried at quarter sessions—as assaults, poor rates, cases of affiliation, and the mass of offences which come within the recent Criminal Justice and Juvenile Offenders’ Acts. In these cases attorneys had formerly no concern, excepting in the dull work of drawing a brief, or as providers for the lions, who had the monopoly of roaring—now they were entirely in attorneys’ own hands. Going from the causes of the advancement of attorneys to the effects produced, Mr. Kynnersley said he could speak confidently of the appearance presented by the profession generally as contrasted with what it was when he first knew it. Doubtless there was a class of men then, at least in country towns, whom they might search for in vain now. “I mean,” said the learned speaker, “the old gentleman with powdered hair, and perhaps a pigtail, and a white waistcoat and shorts, and long white stockings, and buckles in his shoes, and a gold snuff box in his hand, and the manners of a courtier; the brother or near relation of the neighbouring squire, who was agent for half the estates round, the trusted friend in all family complications, the depositary for all the money which was saved by hard earnings, and which was regularly brought to him to be put out, and considered as safe in his hands as in the Bank of England—a man whose name was not often seen in the cause list at the county assizes, but when it was, it was in connection with something worth fighting for, a right of fishery or free warren, or perhaps an action of ejectment against an obstinate squatter, who, after living rent free for nearly a score years, during the whole of which he was receiving the squire’s bounty, both in sickness and health, was at last advised by some ‘poor man’s friend’ to claim the cottage as his own, and turn it into a beer-house, and then down came the old man in his wrath and his indignation at the insult offered to his client; and the result generally was penitence on the part of the offender, and the payment of all

the costs by the squire, and a continuance of the occupation at a rent of a penny a year, and a dinner in the servants' hall on the cottage rent day. Well, gentlemen, he has passed away, it is true, with the 'good old English gentleman, all of the olden time,' his client; and perhaps it was necessary that they should disappear together—the times are too fast for either of them, but they were both of them examples well worth having in remembrance both by attorneys and clients in these days for the high honour, the open hand, and the warm heart which characterised them. The old man of whom I have been speaking was no fancy portrait. I had the happiness to know such a man—a fine scholar, an excellent lawyer, a perfect gentleman. When I first knew him he had nearly retired from general practice, but he retained the agency of a few old friends—country gentlemen who loved and honoured him, and partook of his hospitality when the assizes brought them to the county town. On such occasions glorious were his feasts—not in point of display, for his modest table presented no array of plate or superfluity of dishes—but we had some of the best men at the bar, and four or five of his old county friends—and such port and such cider as are not to be dreamt of in these degenerate faster days—and 'the old man eloquent' astonished us all by his chronicles of the good old days when there were giants in the land, and with an honest warmth denounced the things which he saw and heard in court when he came to bid us to his dinner.

'But all at last must yield to fate: so, like the ebbing tide,
Declining gently to the last, this good old man he died.'

And he died poor; and there was no man left behind him on the earth who could say that he had wronged him of a penny, but there were thousands who could speak of his acts of open-hearted generosity and disinterested kindness. Let it not for a moment be supposed that I am saying that all that is good and honest in the profession died with him—far from it; there are plenty of men, and some of them I am happy to say here in Birmingham, of as high honour and as rich legal attainments as he, but they belong to a younger and a faster school, and are more fitted for the galloping days in which we live." But if they had to lament the fact that practitioners of this type had died out, the profession might congratulate themselves that another and widely different class had been uprooted—he meant the little, mean, underbred, dirty—dirty in person as in practice—pettifogger, who used to be seen in the assize and sessions courts, years ago, grossly ignorant of his profession, his sole knowledge of it confined to getting up an *alibi*, or making a will, or screwing out a *cognovit*. Two or three such Mr. Kynnersley recollected as infesting the courts at Stafford when he first attended them. Of one of these he related a characteristic anecdote, serving to illustrate the numberless stories of his iniquities and of his crafty "dodges." An action was brought against a poor man who had the misfortune to be a client of the attorney referred to, upon a bond which was an undoubted forgery. To prove it such, however, would have been difficult, and would have involved a much greater outlay than either he or his client could command. Under these circumstances the attorney did what

was truly worthy of him, and was a much greater feat of cleverness in the eyes of himself and his compeers—he admitted the genuineness of the bond, but he met it with a *forged release*. Mr. Kynnersley then proceeded to advise the students before him on the right course for their adoption. He impressed on them the maxim written by the wisest man the world ever saw, “that a good name is rather to be chosen than great riches.” A good name might not help them to acquire great riches, but, coupled with industry, it would be more likely to secure to them a position and a competency worthier than were enjoyed by those who suddenly grow rich by fraud and cozenage. Such men, prosperous for a time, would, as he knew from observation, always fail at the last. Character was an indispensable requisite to true and lasting success in every branch of the profession, and God forbid that it should ever be otherwise, or that the standard should ever be lowered, and that those who forfeit the confidence necessarily reposed in them in matters of the greatest import should ever cease to be regarded with contempt and abhorrence. After quoting from the pages of Sir John Davys a quaint and eloquent description of the nobleness of the law and its superiority over all other human professions, Mr. Kynnersley urged his hearers to study by their conduct to show themselves worthy of it, and to strive hard to attain success and distinction in it. He believed that with industry and honesty, success would attend their exertions. They might have an uphill and toilsome struggle, but he counselled them to persevere, in the full belief that in the end what was worthy would tell upon the result—that superficial attractions would wear away, and that the real metal would be seen and apparent when it came to be tried. He advised them to work on constantly to the best of their ability, to talk less than they worked, to maintain good fellowship with each other, and above all, to preserve unimpaired the prestige which had hitherto attached to the Birmingham Law Students’ Society.

MANCHESTER LAW STUDENTS’ SOCIETY.

This Society has also celebrated its annual meeting, winding up with a substantial dinner, and thus spending, we are assured, “a very pleasant evening.”

Vendors and Purchasers.

LIEN.—*Lunatic—Debt due to committee—Application of purchase money*—3 & 4 W. 4, c. 104.—A committee of a lunatic has no special lien upon the estate, after the death of the lunatic, for money expended by him: on his behalf, and a purchaser, having notice of the claim of the committee, is no more bound to see to the application of the purchase money than if he bought with notice of simple contract debts. *Jones v. Noyes*, 28 Law Journ. Rep. Ch. 47.

SPECIFIC PERFORMANCE.—*Forfeiture of lease—Opera box.*—Where a defendant resists specific performance of a contract, on the ground

that he would thereby incur a forfeiture, the Court of Chancery will look at the circumstances which give rise to the danger of forfeiture: and if it arise out of the defendant's own acts subsequent to the contract, the Court of Chancery will decree specific performance, and leave the defendant to take the consequences. *W.*, the lessee of a theatre, assigned his lease to a purchaser, reserving a certain box for himself, his executors, administrators, and assigns, or his or their nominees. The assignee took a renewed lease from the landlord, which contained a condition prohibiting him from letting more than forty-one boxes, except from year to year, with a proviso for re-entry in case of breach. The assignee appropriated forty-one boxes, not including *W.*'s box. *W.* assigned his box to the plaintiff for the benefit of his creditors, and the plaintiff filed a bill for a declaration of his right to the box, which the present lessee resisted, on the ground that, by appropriating more than forty-one boxes, he should incur a forfeiture of the lease: Held, that the plaintiff was entitled to the relief prayed. *Helling v. Lumley*, 7 Week. Rep. 152.

VESTING OF LEGACIES ARISING OUT OF LAND.

We have in our 5th vol. (p. 162) given various "Propositions" as to the vestedness of legacies, and the subject being one of considerable importance, and having been fully discussed in a recent case (re *Hart's Trusts*, 7 W. R. 28; 32 L. T. 98), wherein the Lords Justices differed from Vice-Chancellor Stuart, we think it will be very useful to notice the case fully, and to give the judgment of Lord Justice Turner, first, however, stating shortly the facts, so far as necessary, and the points decided. It appeared that *H.*, the testator, gave real estate to trustees, upon trust for his mother for life, and after her death, upon trust to sell, and out of the proceeds to pay £500 to *D.*, when she should attain twenty-five years; and he directed that the said legacy should carry interest from the time of his mother's death, which interest should be paid in and towards the maintenance of *D.*, until she should attain twenty-five years; and after giving two other legacies out of the fund, the testator directed that the residue of the trust moneys should be in trust for certain other persons. *D.* survived the tenant for life, but died under the age of twenty-five years: Held, that the sum of £500 vested in *D.* absolutely. Lord Justice Turner, on an appeal from the decision of Vice-Chancellor Stuart, said: "I am of opinion that the legacy became vested in *D.*, although she died under the age of twenty-five years. The estate out of which the legacy is given is, by the will, after the death of the testator's mother, vested in trustees on trust to sell, and they are to stand possessed of the moneys to arise from the sale, upon trust in the first place to pay the expenses of or attending such sale or sales, and in the next place to pay to the testator's natural daughter, Harriet Ann Dale, the sum of £500 sterling, when she should attain the age of twenty-five years; and the testator adds the words, 'I

direct that the said legacy shall carry interest from the time of my said mother's decease,' the mother having a previous life interest before the estate of the trustees, 'which interest shall be paid in and towards the maintenance, education, and support of my said natural daughter, until she shall attain the said age of twenty-five years.' And then there are directions to pay two other legacies, and after the mother's death, to dispose of the property, subject as aforesaid, among those of the children of the testator's cousin, Ralph Johnson, who should be living at the decease of the mother. There is, therefore, not merely a trust to pay the legacy when the legatee attains twenty-five, but a direction that the legacy is to carry interest which is to be applied for the maintenance merely. The legatee, therefore, was in this position. She was to be paid the legacy when she attained twenty-five, and to take the interest in the meantime. Both the principal and the interest are appropriated to her; but it was said that the gift of the interest is distinct from the gift of the principal; and it was sought upon this ground to bring the case within the authority of *Batsford v. Kebbell* (3 Ves. 363), and *Watson v. Hayes* (5 M. & C. 125). I think, however, that those cases do not govern the present. In the former of those cases, *Batsford v. Kebbell*, the direction was to pay the legatee the dividends until thirty-two; and at that time to transfer to him the principal; and the court, in holding the legacy not to be vested, seemed to have proceeded on the marked distinction which was drawn between the dividends and the capital; and in the latter of the cases, *Watson v. Hayes*, Lord Cottenham treats the gift of the £25 per annum as a gift, not of interest, but of maintenance only. But in the present case, the direction is that the legacy shall carry interest, annexing, as it seems to me, the interest to the legacy; and I do not see how we could hold this legacy not to be vested, unless we were prepared to hold that no legacy to be paid when a legatee attains a prescribed age, with interest in the meantime, vests until the legatee has reached the prescribed age—a conclusion which would be quite at variance with *Hanson v. Graham* (6 Ves. 239), and many other decided cases. Where a legacy is given by a direction to pay when the legatee attains a certain age, the direction to pay may import either a gift at the specified age, or a present gift with a postponed payment; and if the interest is given in the meantime, it shows that a present gift was intended. A further point, which was urged against the legatee in this case, was that the legacy ought to be considered as subject to the rules which apply to legacies charged upon land, and that, according to those rules, it could not be vested; and *Watson v. Hayes* was referred to on this point also; but I think that what fell from Lord Cottenham upon this subject in that case, had reference merely to the general rules applicable to legacies charged upon land; and having decided in that case that a legacy if not charged upon land was not vested, he said, *à fortiori*, it could not be vested if it were charged upon land. I have not met with any case in which it has been held that the rules as to vesting, which apply to legacies charged on land, are to be applied to legacies given out of moneys to arise from the sale of the land. The case of *Harrison v. Naylor* (2 Cox, 247), certainly

tends to the opposite conclusion, and I think that conclusion the better one ; for the legacy is held by the trustees, and paid to the legatee as money ; and, besides, the rule of the court is to deal with property in the state in which it ought to be, and not in the state in which it is."

RESULT OF EXAMINATION.

(*Hilary Term, 1859*).

At the last examination in Hilary Term it appears that the number of candidates examined was 108 ; of these 94 were passed, and 14 postponed.

The examiners recommended the following gentlemen, under the age of 26, as being entitled to honorary distinction :—

WESTERN, EDWARD YOUNG, of 4, Caroline-place, Guildford-street, London, aged 21, who served his clerkship to Mr. Edward Western, of Great James-street, Bedford-row, and Messrs. Young, Vallings, and Jones, of St. Mildred's-court, London.

SLATER, JAMES, of 26, Warwick-place, Pimlico, aged, 22, who served his clerkship to Mr. John Hunt Thursfield, of Wednesbury, and Messrs. Ashurst and Morris, of 6, Old Jewry, London.

PAYNE, ROBERT, of Oxford, aged 21, who served his clerkship to Mr. John Marriott Davenport, of Oxford, and Messrs. Davies, Son, Campbell, and Co., of Warwick-street, Regent-street, London.

FEARON, CHARLES TATHAM, of Assington, Suffolk, aged 21, who served his clerkship to Messrs. Andrews and Canham, of Sudbury, and Messrs. Gosling and Girdlestone, of Gray's-inn, London.

CARRITT, FREDERICK BLASSON, of 9, Milner-square, Islington, aged 22, who served his clerkship to Mr. Frederick Carritt, of Basinghall-street, London.

The Council of the Incorporated Law Society have accordingly awarded the following prizes of books :—

To Mr. Western, the prize of the Honourable Society of Clifford's-inn.

To Mr. Slater, the prize of the Honourable Society of Clement's-inn.

To Mr. Payne, one of the prizes of the Incorporated Law Society.

To Mr. Fearon, one of the prizes of the Incorporated Law Society.

To Mr. Carritt, one of the prizes of the Incorporated Law Society.

The examiners have also certified that the following candidates passed examinations which entitle them to commendation :—

COWLARD, LETHBRIDGE, of Launceston, aged 22, who served his clerkship to Messrs. Gurney and Cowlard, of Launceston, and Messrs. Bell, Steward, and Lloyd, of Lincoln's-inn-fields.

ELLETT, ROBERT, of Watton, Norfolk, aged 22, who served his clerkship to Mr. Edward Robert Grigson, of Watton, and Messrs. Trinder and Eyre, and Messrs. Eyre and Lawson, of John-street, Bedford-row.

IVIMEY, HENRY, of 1, Amptill-square, Hampstead-road, aged 22, who

served his clerkship to Mr. Joseph Ivinney, of Southampton-buildings, London.

LEWIS, RAYNER, of Tewkesbury, aged 21, who served his clerkship to Mr. Lauriston Winterbotham Lewis, of Tewkesbury, and Messrs. Brewster and Son, of Nottingham.

The Council have accordingly awarded them certificates of merit.

The examiners have further announced to the following candidates that their answers to the questions at the examination were highly satisfactory, and would have entitled them either to a prize, or a certificate of merit, if they had been under the age of 26 :—

WARD, JOHN, of 36, Arlington-street, Camden Town, aged 30, who served his clerkship to Messrs. Moseley and Tayler, of Old Jewry Chambers, London.

BECK, WILLIAM, of 6, Shakespear-terrace, Stoke Newington, aged 33, who served his clerkship to Mr. George Tamplin, of Fenchurch-street, City

FENTON, JOHN BATTYE, of 8, Ely-place, Holborn, aged 32, who served his clerkship to Mr. Francis Tarrant Fenton, of Gravesend, and St. Benet's-place, City, and Messrs. Jaques, Edwards, and Layton, of Ely-place, London.

NEW AND OLD BANKRUPTCY COMMISSIONERS.

BERE AND ANDREWS—BALGUY AND SANDERS.

Death has been rather busy with the country Bankruptcy Commissioners, two of them having lately been taken away—namely, Mr. M. B. Bere, whose successor is Mr. Biggs Andrews, and Mr. John Balguy, who is succeeded by Mr. G. W. Sanders. Of Mr. Balguy, a writer in the *Birmingham Journal*, after noticing his appointment as Bankruptcy Commissioner for the Birmingham district in 1842, observes: “His death was somewhat sudden; it is scarcely a fortnight since Mr. Balguy sat in his court in his usual health, and although his age was verging upon fourscore, the traces upon him of physical decay were comparatively slight. At the commencement of the present month Mr. Balguy had an attack of indisposition, but by no means a severe one, and sought a short cessation from active duty at the hands of the Lord Chancellor: he retired to his seat, Duffield Hall, near Derby, and without any particular increase of his malady, he quietly sank, and died there, we believe in his seventy-eighth year. Mr. Balguy had been so long connected with us, not merely as Bankruptcy Commissioner, but as a leading member of the bar of the Midland Circuit, that something more than a passing notice of his demise is called for. He was called to the bar by the Honourable Society of the Middle Temple so long since as 1805, and was, we believe, at the time of his death the Senior Benchler. Not long after Mr. Balguy was called, he joined the Midland Circuit, in which his family had long resided and had many connections. At that time there were men at the Midland Bar many

of whom afterwards became famous. Clarke (the Welsh Judge) was one of its leaders, and Denman and Copley were struggling upwards. In the midst of men of that order John Balguy made his way; his genial nature, his unbroken serenity of temper, his kindly and loveable nature, above all, his gentlemanly demeanour, soon made him a prime favourite at the bar, and with the solicitors on his circuit. His success at the bar was proportionate; a great or an acute lawyer, the equal of some of his contemporaries—such as Copley, Holroyd, Littledale, Wood, Bayley, or Maule—Balguy never was, and never pretended to be; but in some respects he possessed a power more considerable than either. Mr. Balguy's forte lay with the jury: he was essentially a *Nisi Prius* advocate; in that capacity he felt himself at home, and there he was eminently successful. The writer of these lines remembering him full twenty years ago, when Balguy was in every cause on the Midland Circuit, has full recollection of the raciness of his style—his rollicking, jovial manner of addressing the jury—the skill with which he managed his case, and the adroitness with which he took advantage of points left unguarded by his opponent: all these were characteristic of the man; to which may be added a mode and a felicity of impressing the jury with the truthfulness of his case, which raised him to the highest position in that branch of his profession. As years wore on, and Mr. Balguy's old leaders left this circuit, he himself took a leading place. It was, we believe, in 1833, that Lord Brougham, at the request of Lord Denman, conferred a silk gown upon Mr. Balguy. From that time until his further promotion by Lord Lyndhurst to the Bankruptcy Commissionership here, he maintained his position on the Midland Circuit with such men as Hill, and Goulburn, and Adams for his competitors. In private life, and in the social circle, the qualities of Mr. Balguy most shone forth. He had resided at Duffield most of his life; indeed, his father had lived there before him; and it has been said of the late Commissioner, that, with the exception of the late Duke of Devonshire, he possessed more influence than any other man in the county of Derby. He was Chairman of the Quarter Sessions, and Recorder of Derby, the duties of both of which offices he discharged to the satisfaction of the public. Mr. Balguy was a gentleman in the truest sense of the word; and it was this quality which more than any other secured for him and endeared him to so large a circle of friends. Between him and the late Lord Denman there existed a feeling of affectionate regard, the result of a mutual admiration and appreciation of each other's high qualities. Mr. Balguy leaves behind him a family, who may be sure that it will be long before their father is forgotten."

BARON ALDERSON.

The following is an extract from a notice of a work, entitled "*Letters and Charges of the late Baron Alderson*," in the *Saturday Review*, and which may be acceptable to our readers: "There is little enough that is

exciting in the life of Baron Alderson. He was one of those men, the leaven of English society, who are content with the ordinary rewards of their profession, without using them as stepping-stones to popularity or power. He had many of the qualities by which men rise to historical eminence—a subtle intellect and an eloquent tongue, tested in the fierce ordeal of a rapid and brilliant legal career, great social influence, and the power of physical endurance, without which all these are tantalising mockeries. But for some reason or other, to him, as to many in these later days, the rewards of ambition had lost their gloss. He could appreciate the substantial results of professional success, and he desired as keenly as any man that his life should be a benefit to his fellow-men; but he would not follow the example of most successful lawyers by entering upon a political career, which would conduce to neither the one nor the other of these objects. What appears to have influenced him more than anything in making this resolution was, the death of his brother-in-law, Lord Gifford, whose life had been brought to a premature close by the labour and the anxiety of the Attorney-General's office. Accordingly, he declined several offers that were made to him to bring him into Parliament, and accepted a pious judgeship before he had even arrived at the silk gown.

A number of Letters and Charges, and other detached compositions, are added to the Memoir, together with two or three of his best-known judgments. With the exception of the one on the Jew question, now a matter of constitutional history, these judgments are, of course, only interesting to legal readers. The Letters and Charges deal with more general matter, and are of considerable interest. A judge's opinion is one of the few that are likely to be both instructive and independent, and therefore has always a special value; and in Baron Alderson's case this value was greatly increased by the influence he exercised on many of the distinguished men who were his contemporaries. Several of the papers relate to the question of punishment and reformation. He looked with great suspicion on the humanitarian movement, which threatened to efface the idea of punishment altogether, and treat criminals merely as the victims of a disease, only differing from other diseases in being remarkably inconvenient to society. He did not look hopefully on any of the schemes for the reform of adult prisoners, of which, a few years ago, the speeches of philanthropists were full. It must be added, that it was with very little more hope that he looked on the deterring influence of punishment."

Summary of Decisions.

EQUITY AND CONVEYANCING.

LIEN.—*Deposit of securities—Banker—Broker—General balance.*—The owners of certain bonds, payable to bearer, deposited them with their bankers for safe custody, with authority to the bankers to receive the

interest on them ; but not to pledge or dispose of them in any way. The bankers deposited the bonds with their brokers, to secure advances made by the brokers, but without notice to the brokers that the bonds did not belong to the bankers. The bankers became bankrupt, owing at the time a large amount to their brokers on account for their general balance. The broker sold the bonds for an amount more than sufficient to cover the advances made on them, and claimed to retain the surplus proceeds of such sale on account of their general balance with the bankers. On a bill filed by the owners of the bonds to recover such surplus proceeds : Held, that there being nothing to distinguish the particular transaction from the general dealings between the bankers and the brokers, the brokers were entitled to a lien on the surplus proceeds in respect of the general balance on their dealings with the bankers. *Jones v. Peppercorne*, 32 Law Tim. Rep. 240.

MORTGAGE.—*Redemption—Mortgage of two estates.*—The following case illustrates the important doctrine in the law of mortgages, that a person seeking to redeem a security cannot take it out of the hands of the mortgagee without, at the same time, redeeming another security which the mortgagee holds against the same mortgagor. It makes no difference whether the securities are held by the same persons or in trust for the same persons. To both cases the same principle applies:—It appeared that W. R., in 1832, mortgaged an estate to three persons, trustees of an insurance company, as a security for £1,700 and interest, and in April, 1856, he joined as surety with W. N. in a mortgage, by which he assigned a policy of assurance on his own life to trustees of the same office to secure £2,000 and interest. W. R. knew that both advances were made by the insurance company, though it did not appear upon the deeds. In 1841 W. R. mortgaged the equity of redemption of the property in the deed of 1832, and in 1847 he further charged it in favour of S. and E., for securing in all £2,563 and interest. No notice was given to the company. W. R. became bankrupt in July, 1857, owing on the securities of 1841 and 1847 £1,150. The estates were sold, and the produce of that of 1832 was more than enough to pay the £1,700 and interest, but that of 1856 was not enough to pay the £2,000 and interest, or not sufficient to pay all the money lent : Held, that inasmuch as the mortgagees named in the deeds of 1832 and 1856 were, though different persons, trustees for the same company, that fact was immaterial, and that the company were entitled to be paid the deficiency on the 1856 mortgage out of the surplus arising from the 1832 mortgage, in preference to the mortgages of 1841 and 1847, and to the assignees of W. R. *Tassell v. Smith*, 27 Law Journ. Rep. Ch. 694.

PARTNERS.—*Accounts—Executor carrying on trade without directions in will, and employing testator's assets—Accountable for profits.*—The following decision is one of some importance, and, as it will illustrate some of the "PROPOSITIONS" given by us under the head of "PARTNERS," we give it at some length. A partner in a firm having by will made his co-partner his executor, the executor, after his partner's death, improperly employed the assets in trade, and a bill was filed against him by the

devises under the will. After the testator's death, the executor took two persons into partnership with him, and these persons were not made parties to the suit, though they appeared as witnesses to prove the amount of profits received by the executor: Held, that the executor was accountable for the profits improperly made by him, though the subsequent partners were not made parties to the suit (*McDonald v. Richardson*, 32 Law Tim. Rep. 237). Vice-Chancellor Stuart, in his judgment, said:—The most important question in the cause arises from the breach of trust by the executor, who employed assets of the testator in carrying on the business, and who continued to do so after the year 1855, when he formed a partnership with two other persons. The plaintiffs seek to make the executor pay to them all the profits which have been made by him through this breach of trust. But the executor, on the authority of a decision of the Lords Justices, in the case of *Simpson v. Chapman* (4 De. G. M. & G. 154), insists that no inquiry can be directed on this subject in the absence of the persons whom the executors assumed as partners. This proposition, supported by such authority, embarrassed me so much, that I have taken time to consider the decision of the Lords Justices and the other authorities. It appears that no authority was quoted in the argument before the Lords Justices, and no authority is referred to in their lordships' judgment on this point. But there are authorities inconsistent with the proposition. In the case of *Freeman v. Fairlie* (3 Mer. 43—45), in order to show what profits were made by a breach of trust of this kind, Lord Eldon ordered the executor to produce books in the custody of the executors, partners, or agents, who were not parties to the suit. In the case of *Doebner v. Soares* (2 Myl. & K. 673), the Lord Chancellor, speaking of the right of *cestui que trust* to an account of profits made in this way, says, "Should, in any case, a serious difficulty arise in tracing and apportioning the profits, this may be a reason for preferring a fixed rate of interest; at all events, some inquiry is rendered necessary." A similar doctrine was acted upon by the court in the case of *Palmer v. Mitchell* (2 Myl. & K. 672, n.), where the executors had employed the assets in carrying on business in partnership with persons not before the court. The decree declared that the executors ought to be charged with the profits and advantages made of the testator's estate while employed by them in any trade or business since the testator's death. If these authorities had been cited to the Lords Justices, it seems not probable that they would have overruled them without stating clear and satisfactory grounds. The principle is, that it is the trustee or executor, and not his partners, who are to make good the amount of profits. Where an executor employs assets in carrying on trade without any authority, he is bound to account for and pay over all the profits, or he may be charged with interest at the option of those beneficially entitled to the assets misemployed. This is a right personal against the executor. If the assets have been employed in a trade carried on by the executor in partnership with other persons, the right to the amount of profits made by the misemployed assets, being a right to be enforced against the executor personally, cannot include a right to call the partners of the executor to

account for the share of profits paid over by them to the executor as their partner; nor can it include a right to make these partners account for all their dealings and transactions with the executor as their partner, because that right can only result from privity of contract.

PUBLIC COMPANY.—*Winding-up Acts*—*Test of insolvency*—*Right to the order*—*Costs*.—Shareholders alleged that the company was insolvent and unable to meet its debts and liabilities. They also alleged that the acts of the directors were not *bonâ fide*, and that a proper contribution could only be obtained through the court. They supported the allegations by balance sheets prepared by an accountant, and made an affidavit stating their belief that the allegations were true: Held, at the Rolls, and affirmed by the Lords Justices, without any affidavit being made by the respondents, that the company could enforce the liabilities arising from the subscription to the deed; that, with these facts, it did not appear that the company was insolvent. The petition and appeal were dismissed with costs. *Re The National and Provincial Life Stock Insurance Company*, 27 Law Journ. Rep Ch. 669.

EQUITY PRACTICE.

PARTIES TO SUITS.—*Demurrer*—*Party out of jurisdiction*.—Demurrer for want of parties allowed, a principal defendant, who was abroad, having been named as a party when he should come within the jurisdiction. *Jackson v. Norton*, 7 Week. Rep. 4.

EVIDENCE.—*Cross examination*—15 & 16 V. c. 86, ss. 38, 40—1st Order, June 1, 1854.—Defendant on motion for decree applied for the cause to stand over, his time for cross-examining the plaintiff not having expired: Held, that the application was not of right, but in the discretion of the court, and under the circumstances it was refused. *Bourdillon v. Baddeley*, 7 Week. Rep. 3.

INJUNCTION.—*Common injunction to stay execution before answer*.—A bill was filed by a plaintiff for discovery in aid of his defence to an action at law. Interrogatories had been filed calling for an answer from the defendant. The plaintiff is entitled to move to stay execution in the action, without waiting for an answer (or even for the expiration of eight days which was allowed to obtain the common injunction to stay trial under the old practice), but not to stay the trial of the action. *Lloyd v. Adams*, 32 Law Tim. Rep. 240.

COMMON LAW.

ACCIDENTAL KILLING.—*Action by husband under 9 & 10 V. c. 93*—*Allegation of pecuniary damage*—*Negligence*—*Duty of occupier to keep premises safe for customers*.—Declaration, by the plaintiff, as the administrator of his deceased wife, suing for his own benefit as husband, and claiming damages, that the defendant was in the occupation of an office and passage leading thereto from the street, used by him for the reception of customers and others on business; that the passage was the ordinary means of ingress

and egress between the office and street; that the defendant negligently permitted a trap door in the passage to remain open without being properly guarded and lighted, and that the deceased, having been to the office as a customer, was lawfully passing out by the passage, and, through the said negligence of the defendant, fell through the hole of the trap door and was killed: Held, first, that it was not necessary to disclose or allege any pecuniary damage suffered by the plaintiff, beyond the mere claim, in a declaration under the 9 & 10 V. c. 93; secondly, that a good cause of action against the defendant was disclosed on the facts stated. *Chapman v. Rothwell*, 27 Law Journ. Rep. Q. B. 315.

BILL OF LADING [F. Bk. 9; 2 L. C. 122].—*Indorsee of bill of lading—Liability under charter-party*—18 & 19 V. c. 111, s. 1.—The indorsee of a bill of lading is only liable to be sued on so much of the contract in the charter-party as is expressly incorporated in the bill of lading. *Oliver v. Muggidge*, 7 Week. Rep. 163.

CARRIER.—*Estoppel—Setting up the title of a third party—Property in goods—Conduct of owner.*—A common carrier is not estopped from disputing the title of the person from whom he has received goods to carry. And it is an answer to trover against the carrier by such person that the goods have been delivered to the real owner on his claiming them. *Sheridan v. The New Quay Co.*, 28 Law Journ. Rep. C. P. 58.

CARRIER.—*Railway—Carrying in reasonable time.*—A carrier of goods or cattle is only bound to carry in a reasonable time under ordinary circumstances, and is not bound to use extraordinary efforts, or incur extra expense, in order to surmount obstruction caused by the act of God—as a fall of snow. *Briddon v. The Great Northern Railway Co.*, 28 Law Journ. Rep. Ex. 51.

CARRIERS.—*Special contract—Negligence.*—Where carriers by sea had received a cask of brandy to carry, on the terms (*inter alia*) that they should not be liable for any loss or damage, arising from any cause whatever, during the transit: Held, that they were not liable as common carriers for an injury to the cask. And, the only evidence as to the loss being that the cask arrived staved in (there being no proof as to the cause of this injury), *quære*, whether they would have been liable even had the condition been “not to be liable for leakage unless arising from bad stowage.” *Phillips v. Edwards*, 28 Law Journ. Rep. Ex. 52.

COSTS.—*On demurrer—Verdict—County Court Act—C. L. P. Act*, 1852, s. 81.—By sec. 81 of the C. L. P. Act, 1852, it is provided that the costs of any issue, either of fact or law, shall follow the finding or judgment upon such issue, and be adjudged to the successful party, whatever may be the result of the other issue or issues. However, this is controlled by the county court acts, which, under certain circumstances, take from the plaintiff his right to any costs whatever (see *Abley v. Da.*, 11 C. B. 889). In the following case, which was an action of tort, the plaintiff had a verdict for £5, and the judge did not certify for costs. There was a demurrer on the record upon a new assignment previously argued, on which judgment had been given for the plaintiff: Held (confirming the

decision in *Abley v. Dale*), that the plaintiff was not entitled to his costs of the demurrer. *Dunston v. Paterson*, 7 Week. Rep. 163.

INCOME TAX.—*Rents and annuities—Deduction of tax from rent.*—Where the defendant enjoyed an annuity charged upon real property, which was to be paid "free and clear of all taxes and assessments," and refused to allow the owner to deduct the income tax charged in respect of the property: Held, that notwithstanding the provision in the deed, the defendant was liable upon an information for penalties imposed by the income tax acts, for refusing to allow deductions of income tax, authorised by those acts, from "rents or annual payments." *The Attorney General v. Shields*, 28 Law Journ. Rep. Ex. 48.

LEASE.—*Option to determine—Duration of lease of premises.*—A lease dated the 19th of January, 1851, of certain premises to hold from the 25th of December, 1849, for and during the full term of fourteen years then next ensuing, containing a proviso that either the lessor or lessee may determine the lease at the expiration of the first seven years, by six months' notice to quit, is a lease determinable at the expiration of seven years from December 1849, on due notice being given. *Bird v. Baker*, 7 Week. Rep. 8.

LIBEL.—*Statute 6 & 7 V. c. 96, s. 2—Insertion of a full apology.*—The statute 6 & 7 V. c. 96, s. 2 (see C. L. Princ. 345, 346), which permits newspaper publishers, in actions for libel, to plead that the libellous matter was inserted without malice, and that a full apology had been inserted in the newspaper, and to pay money into the court by way of amends, contemplates the insertion of an apology, not merely sufficient in its terms, but inserted in a proper mode as to type and place. Where, therefore, on an issue on such a plea, the jury found that the libel was inserted without malice, and that the apology was sufficient in its terms, but that it should have been in larger type and inserted in a different part of the paper: Held, that this entitled the plaintiff to a verdict. *Lafone v. Smith*, 28 Law Journ. Rep. C. P. 33.

PUBLIC COMPANY.—*Bill of exchange [C. L. Princ. 91, 92]—Joint Stock Company Limited—Liability of officer on bill—Joint Stock Companies Act, 1856 (19 & 20 V. c. 47, s. 31).*—The 19 & 20 V. c. 47, s. 31, enacts, "that if the officer of any limited company registered, signs, or authorises to be signed on behalf of such company, any bill of exchange, promissory note, indorsement, cheque, &c., wherein its name is not mentioned in manner aforesaid (i. e., with the word 'limited' after the name of the company), he shall be liable to a penalty of £50, and shall further be personally liable to the holder of the bill of exchange, &c., for the amount thereof, unless the same is duly paid by the company." In the following case it appeared that a joint stock company, being duly registered under the 19 & 20 V. c. 47, with limited liability, a bill of exchange was addressed to the company, as drawees, by their name, omitting "limited," and the defendant, who was secretary to the company, and had authority to accept the bills for the company, accepted the bill in his own name, adding "secretary to the said company:" Held, that the acceptance was intended

as the acceptance of the company, and the defendant was, therefore, personally liable to the holder of the bill, under 81st sec. of the act, by reason of the omission of the word "limited." *Penrose v. Martyn*, 28 Law Journ. Rep. Q. B. 28.

STATUTE OF LIMITATIONS.—*Effect of petitions under 7 & 8 V. c. 70—Acknowledgment of debt.*—The cases decided upon the subject of acknowledgments to take a case out of the Statute of Limitations before *Tanner v. Smart* (6 B. & C. 608), put the law in some confusion, but now it is clear that there must be an acknowledgment unaccompanied by any conditions, or if there be a condition, there must be proof of such condition having been performed; if it has not, then the acknowledgment does not take it out of the Statute of Limitations. In *Smith v. Thorne* (21 L. J. Q. B. 199), Parke, B., speaking of what is necessary to take a case out of the Statute of Limitations, says, "there must be an acknowledgment from which the court may infer a promise to pay on request, or a promise to pay upon a condition which has been fulfilled, or after a given time which has elapsed." It was decided in the following case, that a petition presented under the arrangement clauses of 7 & 8 V. c. 70, is not a sufficient acknowledgment of a debt so as to defeat the effect of the Statute of Limitations, there being no promise to pay, and nothing from whence such a promise can be inferred. *Everett v. Robinson*, 7 Week. Rep. 9.

STATUTE OF LIMITATIONS.—3 & 4 W. 4, c. 42, s. 14—*Acknowledgment by answer to bill in Chancery.*—An acknowledgment of the plaintiff's title, contained in an answer to the plaintiff's bill in Chancery, by the defendant in possession of land, is evidence of an acknowledgment in writing within sec. 14 of 3 & 4 W. 4, c. 27, sufficient to avoid the effect of that Statute of Limitations. *Goode v. Job*, 7 Week. Rep. 7.

SUCCESSION DUTIES ACT.—*Deductions—Property tax—Costs of collection of rents—Annual value—Outgoings.*—In calculating the value of an assessment under the Succession Duties Act, the commissioners are not to allow deductions on account of income tax upon real property, or on stock, the produce of real property, nor for the costs of collecting rents of real property during a temporary absence of the owner abroad. *In re Elwes*, 28 Law Journ. Rep. Ex. 46.

WARRANTY.—*Unsoundness of a horse, definition of—Congenital defect.* It is a breach of a warranty of the soundness of a horse if such horse at the time of sale had so defective a vision that he was not fit for the ordinary uses to which he might be put, and that whether such defect arises from disease or be congenital. *Holliday v. Morgan*, 7 Week. Rep. 7.

COMMON LAW PRACTICE.

COSTS.—*Taxation of—Arbitration—Distributive issue—C. L. P. Act, 1852, s. 81.*—Upon a reference of all matters in difference in a cause, the costs to abide the event of the award, the party in whose favour the action is decided by the award is entitled to the costs of the cause, although some of the issues may be found in favour of the other party. To one of several counts in an action of slander the defendant pleaded a multi-

farious plea of justification, setting forth a series of statements of facts, any one of which was a sufficient answer to such count. Upon a reference of the cause, the arbitrator found that one of such statements in the plea was true, and that the others were untrue. The finding on the issues as to another count was for the plaintiff, who had the general costs of the cause : Held, that the finding of part of such plea to be untrue was not a finding of an issue for the plaintiff within the 81st section of the C. L. P. Act, 1852, or of the rule Hilary Term, 2 W. 4, s. 74, and that the plaintiff was therefore not entitled to the costs of the issue on such plea. Held, further, that the defendant was entitled to the costs of so much of the plea as was found in his favour, including costs of evidence applicable to such part, though also applicable to the residue of the plea, but not to the costs of any evidence applicable only to that part of the plea which was found to be untrue. *Reynolds v. Harris*, 28 Law Journ. Rep. C. P. 26.

COSTS.—*Reg. Gen. 156, Hilary Term, 1853—Costs of the day—Not proceeding to trial—Judgment by consent—Attestation by attorney.*—Where a defendant had given a written consent for a judge's order to sign judgment, attested by an attorney on his behalf, not his attorney on the record, and had revoked it next day, and given the plaintiff notice that he intended to defend the action, but this notice was on the eve of the day for trial : Held, that he was not entitled to claim costs from the plaintiff for not proceeding to trial. *Samuel v. Bate*, 28 Law Journ. Rep. Ex. 39.

INTERPLEADER.—*Sheriff—Effect of sheriff's having been employed by one of the claimants.*—The sheriff is entitled to call upon the execution creditor and claimants to interplead, unless he has acted dishonestly, or his conduct has prejudiced either of the parties. The fact, therefore, that the sheriff had, down to the seizure of the execution debtor's goods, acted as the attorney of a claimant, and had given him notice of the execution, is not alone sufficient to prevent his calling on the parties to interplead. *Holt v. Frost*, 28 Law Journ. Rep. Ex. 55.

SECURITY FOR COSTS.—*Commission to examine witnesses.*—The rule laid down in *Foster v. Colby* (27 L. J. Ex. 55), that the court will not interfere with the master's discretion as to the amount of security for costs, unless a change of circumstances is clearly established, confirmed ; and held that the amount of security could not be increased merely because it was apprehended that the expenses attending a commission to examine witnesses might be greater than had been anticipated. *Haseltine v. Watkins*, 28 Law Journ. Rep. Ex. 40.

SERVICE OF RULE.—*Rule for payment of money—Attorney.*—Service of a rule calling upon an attorney for payment of money pursuant to his undertaking, on a clerk not in his employ, although at the place registered at the master's office as a place for serving the attorney with rules, &c., held not sufficient. *Bragg v. Hatchard*, 28 Law Journ. Rep. Ex. 85.

STAY OF PROCEEDINGS.—*Tender before declaration—Refusal—Costs.*—The rule that if a plaintiff in an action of debt refuses an amount offered on a summons to stay before declaration, and recovers no more, he is not entitled to costs and that the defendant may claim his costs of suit

subsequent to the tender and refusal (*Shaw v. Hughes*, 24 L. J. C. P. 84), is, as regards the latter part of it, at all events, not so absolute as to preclude the courts or a judge from exercising a discretion in the application of it, so as to modify its operation, where the presumption of oppression on the part of the plaintiff is rebutted by some reasonable explanation of his ultimately accepting the sum offered in satisfaction. *Walton v. Brown*, 28 Law Journ. Rep. Ex. 38.

TRIAL.—*Setting aside—Ejectment—Verdict by default—Non-appearance of defendant.*—In an action of ejectment, entered at the assizes, the defendant not appearing when the cause was called on for trial, the plaintiff's counsel at once took a verdict; immediately after which the defendant's counsel came into court, strictly in time (by the clocks of the assize town), and ready to try, which the plaintiff's attorney refused to consent to; the court let the defendants in to try without terms. *Curtis v. Marsh*, 28 Law Journ. Rep. Ex. 36.

WRIT OF SUMMONS.—*Service—Application for discharge out of custody—Affidavits—Additional, or in answer.*—An application to discharge a defendant out of custody, on an affidavit that he had never been served with process, and that it had not been brought to his knowledge, having been made at chambers, and answered by an affidavit of the party who had made the common affidavit of service, fixing the place and circumstance of the supposed service, the defendant was allowed, on a subsequent application to the court, to use fresh affidavits, disproving the supposed service by showing a mistake as to identity on the occasion alluded to; and this being clearly shown: Held, that the defendant was entitled to be discharged without any terms. *Mosely v. Blake*, 28 Law Journ. Rep. Ex. 35.

Course of Law Studies.

(Continued from p. 9).

Before we proceed further, we wish to state what it would, perhaps, have been better if we had done before—namely, that there are works in existence purporting to guide the law student in his studies. Some of these really performed the promise of their title-page in a very modest and creditable manner, but, being quite out of date, we need not mention them here. In their places, we have some modern works of much greater pretension, though of inferior utility. The principal of these are—*Warren's Introduction to Law Studies*, *Cox's Advocate*, and *Wharton's Articled Clerks' Manual*. Mr. Warren's work is a very brilliant specimen of literary composition, and is certainly not a little interesting; but we fear that, after the student has finished the work, he is little wiser than before. One serious defect of the work is the absence of anything like a discriminative judgment upon the works mentioned in it, so that the student has not the advantage of the advice of an experienced guide. No doubt, some part of

this is owing to an unwillingness on the part of the writer to offend the various authors, and it may be that good nature has also had its share of influence. But the reader has a right to expect that these considerations should not operate to his prejudice. We do not wish it to be thought that we say Mr. Warren's work has no merits; on the contrary, we conceive it to be the very best in its peculiar line. Our chief objection is, that after the student has read it he is little wiser than before, and that, should he attempt to follow out the directions of the author, he would, in most cases, find that he was pursuing a course little calculated to profit him. The fault is in the method rather than in Mr. Warren's execution of his work.

Mr. Cox's work, which is entitled *The Advocate: His Training, Practice, Rights, and Duties*, is not yet complete, there being but one volume published. The work is chiefly intended for the use of students for the bar, and though we should doubt its utility to them, we cannot doubt its inutility to the articulated clerk. Such parts of it as are original are little better than rhodomontade, and certainly it is an altogether inferior production to Mr. Warren's work, which, indeed, when placed by the side of Mr. Cox's work, assumes a practical business appearance. We do not say that Mr. Cox's work may not occasionally amuse; the singularity of some portions of it will, without doubt, excite the risibility of the reader at the expense of the writer; but we do say, that the student will not gain any useful information in his studies. The last work we referred to above was Mr. Wharton's work, which is also the last in point of time, and is more directly addressed to articulated clerks than either of the others. Its great weaknesses are, an endeavour to say something upon everything, and the entire absence of discrimination in the mention of works upon the various branches of the law. A large part of the work (which is but a small volume) is taken up with the Examination Questions, and, not content with noticing the five usual departments of the practical studies of an English lawyer—viz., common law, equity, conveyancing, bankruptcy, and criminal law—Mr. Wharton has given the reader courses of study on constitutional, Roman, civil, ecclesiastical, colonial and international laws, and medical jurisprudence, and the consequence has been that a work, making great pretensions to exactness and extent of information, in reality gives no information at all. We do not complain of the author for recommending his own works: that is legitimate; but there is great cause of complaint as to the defect of judgment, both in recommending bad books, and in not mentioning at all those which really are good works. It is difficult to conceive that this can have arisen from ignorance; but with either that, or something worse, Mr. Wharton is certainly chargeable. At any rate, his work in that respect is not merely useless—it is positively objectionable.

We have not spoken of the above works in so disparaging a way with a view to exhibit our superiority; indeed, the failure of those writers in their attempts is enough to make a prudent person think twice ere he essays a similar production. Even though it should be possible to avoid the errors of Messrs. Warren, Cox, and Wharton, we are still of opinion that any

such work, aiming to satisfy all readers, must, for the reasons referred to at the beginning of this article, be a failure, and that simply because it undertakes to give advice without respect to the mental calibre of the particular students into whose hands it may fall.

We have already stated (p. 5) that we do not approve of setting an ordinary youthful student on Blackstone or Stephen's four volumes, and it therefore remains that we should specify some works more suitable. In our opinion, the student would do well to commence with Mr. Warren's Blackstone or our own 'Outlines of Practical Law, or Law Student's First Book,' being works not only more moderate in price, but also in size, and not therefore making so great a demand on the student as the large work of Blackstone. There is a second edition of Mr. Warren's work, and the price is 18s. The work appears to us well suited for a youth just commencing his legal studies, but it is not of so practical a nature as a more experienced student would desire. It is more a history of the law than a statement of the doctrines and practical details, so that the student must be content with picking up here and there some doctrines, rather than look to this work as a depository of them. One great recommendation is that the volume is very *readable*, and an ordinary student may hope to get through it, without greatly taxing his powers, in about a month, and if he have read with care he will not fail to have some general notion of the law as it exists, though probably nothing very definite, and may not be able clearly to discriminate between what is now the law and what was formerly so—a result arising from the perusal of any work which founds itself on the historical method. The student must, therefore, trust to his subsequent studies to assist him in discriminating the repealed portions from those in actual operation. It must not be concluded, from the above observations, that we think the historical part of the law to be an impediment to the student; very far from that, but it must necessarily, at first starting out, cause some difficulty. In our opinion, the student who has got a pretty accurate knowledge of the actual state of the law will derive great advantage from the study of the repealed portions, provided he bears in mind the fact that it is repealed law, and looks out carefully for the connexion which the existing law bears to it, and marks correctly the real bearing of the latter on it. It is a great pity that the historical part of our law is not cultivated, and that those only study it to whom it is of the least value—namely, commencing students. Before finally dismissing Mr. Warren's work, we should mention that it was published in 1856, and, therefore, necessarily does not contain any mention of the important alterations which have been made in the law since that time.

It is in view of the importance to a young student that he should obtain a precise knowledge of the outlines of the existing law, that we venture to recommend our own "Outlines," which is small in bulk and in price (10s. 6d.), and was published in 1858. We are precluded from doing more than stating that the object was to furnish the student with an outline of the law in its existing state, leaving out the historical portions. In some respects the work is of a more practical nature than would be expected from

so small a volume, but this was done in the belief that it would prove the more instructive, not only to the commencing, but also to the advanced student, serving to the latter as a kind of summary of what he had read elsewhere more at length.

Should the student not wish to commence with either Mr. Warren's or our own "Outlines," we would still recommend him not to take up Blackstone or Stephen's Commentaries as a first book. It would be better, we think, that he should read some comprehensive works on the principal branches of the law. This would be a course less irksome than wading through the above four volumes, and be more likely to leave some useful traces on the mind of the student, more especially as the books we have in view are not of very great bulk. It is true that the student will not gain so complete a general view of the whole range of the law, but to our minds this is rather an advantage than otherwise. It is after a knowledge is obtained of particular portions of the law that the student is likely to feel interested in the other matters which are new to him. At any rate, it is very different to the state of him who has no previous knowledge of any of the matters contained in four large volumes. We speak feelingly from our own recollections, and from converse with others who have been pushed through a similar course. We would recommend any one desirous to follow the plan here referred to, to take up one of the following works, namely, Williams' Principles of the Law of Real Property; Williams' Principles of the Law of Personal Property; Haynes' Outlines of Equity; Josiah W. Smith's Manual of Equity Jurisprudence; Hunter's Elementary View of the Proceedings in a Suit in Equity; the late John W. Smith's Elementary View of the Proceedings in an Action at Law. Now any of these works may be mastered by a student within a reasonable time and without much labour, and when this is accomplished, no little fund of instruction will have been gained if the reading has been conducted with ordinary care. We have not mentioned the prices or editions of the above works, as we shall have occasion hereafter to refer to them in connexion with others in their respective departments.

It will be observed that we are not recommending in an absolute manner the reading of the above works before others, but only in preference to Blackstone and Stephen, and that our views are not now for the first time formed, we give the following from an article written several years ago:—"We take it that what a student wants is to obtain in as small a compass as is consistent with perspicuity a good general view of the extent of legal learning, and at the same time such precise notions of the *leading* doctrines of the various subdivisions or heads of the law as might suffice to enable him at once to take in a view of the whole, to comprehend their relations to each other, and to serve him as a stepping-stone to more extended inquiries. Now, to obtain these, the student must (without being sure of attaining his object) read through the four volumes of Blackstone or Stephen, and that is a task which occupies most students a considerable part of their clerkship, and in very many instances such a perusal fails to furnish the information desired, because the student grows weary of reading so much matter,

which naturally appears to him very abstruse, because he has not previously obtained any knowledge of the various subjects: In our opinion, to read Blackstone or Stephen with effect, the student should *previously* obtain a pretty accurate notion of the general contents of the work, and *some knowledge* of the more important heads and leading doctrines of which those writers treat. In other words, the little progress made in the perusal of the *Commentaries* by the generality of students arises from the want of *previous acquaintance* by the reader with the topics discussed. No one feels an interest in the study of a great number of abstruse matters brought to his attention for the first time, and that under circumstances which preclude his obtaining any very definite notions of their meaning and practical application. Every lawyer is aware how much more satisfactory is his reading on subjects with which he has previously obtained a practical acquaintance, and it has been mentioned by many eminent lawyers that their reading for the purpose of deciding any particular point brought to their attention has been more productive of lasting information than all their mere matter-of-course reading; the reason is obviously this, that they have previously obtained a general notion of the matter, and have their attention directed to specific points of inquiry. Now, any plan of study which should assimilate to these undoubted means of obtaining instruction, would be most likely to be serviceable to the student; for it must be borne in mind that at some period of the student's career he *must* read Blackstone or Stephen, and whatever therefore will facilitate that perusal must be serviceable to him.

The points which we conceive it proper to consider, in any useful plan of study, are to give a good outline, which, for our purpose, being chiefly (though not exclusively) introductory to Blackstone, should follow the same order; and, at the same time, to call the reader's attention in a distinct manner to the leading doctrines of each principal subject-matter, leaving the more minute and important details until the student is able to attend to them with advantage."

Moot Points.

No. 1.—*County Court Warrant—Guernsey* (*ante*, pp. 28, 38).

If the judgment of the county court be removed by certiorari into one of the superior courts, could such court issue a *ca. sa.* for the apprehension of the defendant at Guernsey? if so, to what gaol would he be committed? or supposing the plaintiff sued out an *exigi facias*, and proceeded to outlaw the defendant, could you give me any idea what would be the costs of such proceedings, the debt and costs now amounting to upwards of £30.

R. J. B.

No. 10.—*Dower—Conveyance—Will.*

A., seised in fee, conveyed unto and to the use of B., his heirs and assigns, in trust for himself, A., his heirs and assigns. A., by his will,

devised the same lands unto and to the use of B., C., and D., their heirs and assigns absolutely, free from any trust, and as joint tenants. Has the wife of B., who was married before 1834, any title to dower?

G. R. ROGERSON,

4, Chapel-street, Liverpool.

No. 11.—*Appointment—Rights of Appointees.*

A married woman had a power under her ante-nuptial settlement to appoint by will a sum of Government stocks standing in the names of the trustees of the settlement. She by her will appointed the stocks to A., and made Z. her executor, who proved the will. The trustees sold out the stocks, but refuse to pay the money to A., alleging that he is not the proper person to receive and give a discharge for the same, but that Z. ought to give the receipt for the produce of the stocks. He however refuses to do so, contending that the appointees are the proper parties to give the receipt. Can the appointees require payment to be made to them alone?

H. W.

No. 12.—*Dower—Deed not Executed by Purchaser.*

A conveyance is made, since the passing of the Dower Act, from A. to B. in fee. It is declared by the Act 3 & 4 W. 4, c. 105, s. 3, that a widow shall not be entitled to dower out of any land of her husband when in the deed by which such land was conveyed, or by any deed *executed* by him, it shall be declared that his wife shall not be entitled to dower. In the present case the deed of conveyance was executed by the vendor only, and not by the purchaser, B. The mooter would be glad of opinions whether, on B.'s death, his wife will be dowable.

H. L. EVANS, Cavendish-street, London.

No. 13.—*Burglary—Breaking and Entering.*

Is it necessary, to constitute burglary, that the breaking and entry be effected at one and the same time? For instance, if the breaking be effected in the day, and the entry by night, is this sufficient to constitute the offence? Or, if the breaking be committed one night, and the entry on the following (or any subsequent) night, is this sufficient to constitute burglary? The mooter apprehends an answer in the negative must be the correct one in either case, as he considers (looking at the definition of burglary) that the breaking and entry must both be committed in the night time, and at the same moment. Should any correspondent take a different view, I shall feel obliged by cases in support of such view.

H. L. EVANS, Cavendish-street, London.

No. 14.—*Legacy to Married Woman—Husband's Rights.*

A.'s wife is entitled to a legacy under the will of her father, expectant upon the death of her mother, to whom the interest is given for her life. The wife's interest is a vested one. A., by his will, assuming that he was entitled to dispose of the legacy to his wife, gives her a sum of about the same amount as the legacy, without stating that it was to be paid out of any particular fund. The testator is expected not to live long, and supposing

him to die before his wife, without having received the legacy given to her by her father's will, will the wife be entitled to that legacy, and also take the legacy given to her by her husband's will? C. D.

No. 15.—*Admission of A. and Heirs Male.*

An admission to a copyhold is taken thus: "To A., with remainder to his heirs male to be begotten," leaving out "of his body." What estate did A. take? C. D.

No. 16.—*Reservation of Minerals—Inclosure.*

Many years ago, under an Inclosure Act, incorporating the General Inclosure Act, an allotment was made to the lord of the waste lands intended to be inclosed, of a portion of such lands, in lieu and in satisfaction of his "right to the soil" of the said lands, and then the other waste lands were allotted to the commoners, &c., in fee. The Inclosure Act contained a reservation to the lord of all "manorial rights, mines, and minerals, &c., except clay, and the right to the soil as aforesaid." There were other lands mentioned in the Act, and of which the lord might be entitled to the mines and minerals. Did the allottees become entitled to the minerals beneath their respective allotments, or is the lord entitled thereto? Vox.

No. 17.—*Devise—Life Estate or Fee.*

W. H., by his will, dated in 1832, after directing payment of his debts, gave and bequeathed to J. T. (whom he appointed sole executrix), all the rest, residue, and remainder of his estate and effects of what nature or kind soever which he should die possessed of or entitled unto. Testator died in 1852, and left considerable property, tenure freehold. Does J. T. take the fee or only a life estate? I have been told that a charge for payment of debts has been interpreted as showing an intention on the part of a testator to pass the fee, though no words of limitation or perpetuity followed the name of the devisee. If such is the case, can any correspondent refer me to an authority? H. M. O.

No. 18.—*Trust to Sell after Death of Tenant for Life.*

A., by his will (made since 1st January, 1838), gave and bequeathed all his real and personal estate to two trustees, their heirs and assigns, upon trust to pay the annual produce thereof to his wife during her life, and, after her death, upon trust to sell the same real and personal estate, and divide the produce of such sale amongst his children.

Testator appointed his said trustees and his wife executors and executrix of his will. The real estate consists of land and houses, held under a lease for lives. The trustees are both dead, intestate, one surviving the other about two years.

The widow (who is still living), and the surviving trustee proved the will.

It is desired to sell the property, and all the interested parties, as well as he heir-at-law of the surviving trustee, will join in an assignment.

Would a purchaser be safe in accepting such an assignment?

T. O. K.

No. 19.—*Copyholds—No Admission by Vendor.*

By conditions on the sale of copyholds it is stipulated that the purchaser shall not object to the want of an existing tenant on the rolls, and that he shall bear the expenses of the execution of a surrender and his admission. It appears by the abstract that the vendor, who was a devisee of a duly admitted tenant, has not been admitted, and the purchaser insists that the vendor must procure admission at his own expense in order to be able to execute an effectual surrender. The vendor contends that under his conditions he is not bound to do this, especially as he stated that there was no tenant on the rolls. Which party is right?

J. LEE.

No. 20.—*Statute of Limitations—Copyhold.*

A., tenant on the rolls of a manor, died in 1836, and immediately thereafter B. entered on the copyhold lands, claiming as devisee under a pretended will of the late tenant, but there was no duly executed will. B. was never admitted by the lord, nor did he pay any quit rents or make any acknowledgment of the title, either of the lord or of the heir of the late tenant. The latter now claims the lands, and the lord has admitted him, but B. contends that he has under the Statutes of Limitation a good title against the heir, and that, even as against the lord, he has a title as to a freehold, the lands being no longer of a copyhold tenure by the effect of those statutes. It seems clear that he has a good title to the lands as against the heir, and that he is not liable to the quit rents or other services, but can it be said that the Statutes of Limitations have converted the copyhold tenure into a freehold tenure. If not, how can the lord compel B. to come in and take an admission. A reference to authorities, or to principles upon which the points may be determined, will oblige.

J. LEE.

No. 21.—*Trustees—Misappropriation—Liability.*

A. and B., on the marriage of C., were appointed trustees of the settlement. The property being considerable, it was arranged that A. should have the sole management of one half, and B. the sole management of the other half.

Quære, if B. misappropriate his share, are both trustees liable? Is there any leading case on the subject.

W. ROWLEY.

No. 22.—*Master and Servant—Written Contract.*

If A. and B. (master and servant) agree that B. shall serve A. as his servant for the space of eighteen months, but on the happening of a given event before the expiration of the year the service shall be at an end, is this a contract which, within the 4th section of the Statute of Frauds, ought to be in writing, and signed by the parties.

W. ROWLEY.

No. 23.—*Power to Sell and give Receipts.*

A., a testator, devised all his real, and bequeathed the residue of his personal, estate unto B., his heirs, executors, and administrators upon trust to sell and dispose of the same and convert the same into money, and to

stand possessed of the moneys which should arise by such sale and conversion upon trust in the first place to pay his debts, funeral and testamentary expenses; then upon trust to pay and divide the same unto and amongst several nephews and nieces therein mentioned.

B. died in testator's lifetime: consequently the devise lapsed. C., one of the residuary devisees, obtained letters of administration *cum testamento annexo*, and with the heir-at-law proceeded to sell the estate. Can these parties convey and sign receipts for the purchase money?

The purchaser's solicitor contends, that, the testator having provided a channel for the execution of the trust which failed only by the act of God, there is no person who has a power of sale or signing receipts, and therefore the trust can only be executed by the court (see Lewin on Trusts, 3rd ed. p. 448).

W. W.

Answers to Moot Points.

No. 1.—*County Court Warrant—Guernsey* (p. 70).

If the debt without the costs does not amount to £20, the plaintiff cannot issue a *ca. sa.*, but he might issue a *fi. fa.*, which would be sent to Guernsey, directed to the officer in whose bailiwick defendant now resides. If the debt is £20 without costs, the plaintiff might issue a *ca. sa.*, and defendant would be lodged in some goal in Guernsey. Plaintiff would, of course, recover his costs of execution, &c. (7 & 8 V. c. 96, s. 57).

S. W. TURNER.

No. 4.—*Conveyance in the Name of Husband and Wife* (ante, pp. 36, 39).

The deed in this case, upon which the validity of the title is questioned, appears to be a conveyance under the Statute of Uses, and by which, for a valuable consideration paid by B. (the husband), A. grants to B. and C. (who is the wife), to such uses as C. should appoint. And until, and subject to such appointment, to the use of B. and C. and the survivor of them for life, with remainder to the use of C. in fee. C. having died without exercising her power of appointment, B. assumes that he has a right to deal with the fee, and has accordingly entered into a contract for sale, and contends that the conveyance to him and his wife, was, so far as she was interested, voluntary, and therefore not binding as against him and *bonâ fide* purchasers.

I do not think that such a construction can be maintained, and that it is the case of a purchase by a husband in the name of and for the benefit of his wife, as suggested by the Editors of the *LAW CHRONICLE*. In Sugd. V. & P. 9th ed. vol. 2. p. 147, it is stated that "A purchase by a husband in the name of his wife, is deemed an advancement and provision for her. But if a purchase in the name of wife or child be after marriage and voluntary, it may perhaps be fraudulent as against creditors, in like manner as if the settlement was of property actually vested in the husband, in even which case it seems that the husband must be proved to have been indebted

at the time of the settlement to the extent of insolvency, in order to affect the settlement. It has, however, been strenuously argued that a *purchase* is not within the operation of the statute of 13 Eliz." (and of consequence the 27 Eliz. also): "For as the purchaser may give the money to the object of his bounty to purchase the estate for himself, he may by the same reason direct a conveyance to be made to him, and this seems to be the better opinion where the case is clear of actual fraud." See also the cases there cited in support of this view.

It seems to me, therefore, that the utmost B. can do is to sell his life estate, and that to deduce a good title to the fee, the heir-at-law of C. must join to pass the remainder.

J. G. W. EDWIN.

No. 9.—*Lease—License to Assign* (ante, p. 38).

The effect of the license to assign given by A. is merely to enable B. to do that which A. has restricted him from doing without such license. B., as the *lessee*, will still remain liable on his covenants to A. precisely in the same manner as if he had been at liberty to assign the premises without a license at all. C., the assignee, will be liable so long only as he *continues* assignee, the distinction being, that the lessee is always liable to his lessor, but the assignee continues liable to the lessor only so long as he remains such. And it is for this reason that, on assignment of leasehold property, the lessee or assignor invariably takes a covenant from the assignee to pay the rents and perform the covenants, so that on this covenant the lessee has a remedy over to cover his own liability.

J. G. W. EDWIN.

No. 10.—*Dower—Conveyance—Will* (p. 70).

The querist should have stated whether B., C., and D. are all living; and whether the joint tenancy has been severed. But perhaps the following answer will enable him to come to a conclusion whether the wife of B. is or not entitled to dower. By the conveyance to B. in trust for the grantor, the wife of B. would, I think, by the *common law*, be entitled to dower on surviving her husband, but of which she would be debarred by a court of equity; because so far she would be only entitled as the widow of a mere trustee. So long as the joint tenancy continues intact, I consider that neither the wife of B. or either of the other devisees is entitled to dower in equity. Of course, if B., or either of the other joint tenants, should survive the other two, the wife of the survivor would both legally and equitably be entitled to dower. Strict inquiry should be made whether the joint tenancy has been severed (as it may be *secretly*, by either of the devisees making a conveyance of his share to a trustee in, trust for himself); if it has, the severance would let in the wives of all three devisees to a title to dower, as the severance would create a tenancy in common.

F. A. C.

No. 10.—*Dower—Conveyance—Will* (p. 70).

If A. became entitled to the *equitable estate* previous to the passing of the Dower Act, 3 & 4 W. 4, c. 105, and he executed the conveyance which gives him that estate, before his marriage, I think his widow is not entitled to dower.

Dower did not attach to trusts estates prior to the 31st December, 1833 (1 Steph. Com. 2nd ed., 356). And neither would she be entitled, I think, if the estate was acquired since; *cestui que trust* having disposed of it by will, which the same act declares shall in that case be valid and effectual against his wife's claim to dower. W. M. SHERRING.

Note.—It will be seen that our correspondent has read the question as if it referred to the wife of A.—EDS.

No. 11.—*Appointment—Right of Appointees* (p. 71).

I consider, from what is stated in H. W.'s query, that the appointees are the proper parties to receive the produce of the stocks and give receipts, and that they can require payment to be made to them alone, provided that the bequest is not chargeable with any debts, &c., payable thereout by the executor. I presume that the objection to pay the money into the hands of the appointees is grounded on the rule in law that a legatee cannot receive a bequest without the consent of the executor; the latter being liable to the payment of his testator's debts and funeral expenses out of the personal estate before dividing the personalty amongst the persons entitled. Cannot the trustee's objection be met by a written request from the executor to them to pay the money to the appointees? F. A. C.

No. 11.—*Appointment—Rights of Appointees* (p. 71).

Presuming the power of appointment contained in the settlement to be well executed, I think the receipt of the appointee is quite sufficient for the trustees, and in fact the only discharge they can require. It does not appear that the appointor had any beneficial interest whatever in the corpus of the trust fund; but that she was merely the instrument to point out the person who should take it under the settlement, and, therefore, having no beneficial interest, none could pass to her executor for which his receipt could be necessary.

If she had such an interest, the *assent* of her executor would, I think, be necessary, in order to relieve it from the liability to the payment of her debts, &c. W. M. SHERRING.

No. 11.—*Appointment—Rights of Appointees* (p. 71).

I am of opinion that the executor is the proper person to receive and give a discharge for the produce of the stocks. I consider that the appointment of the stock is similar to a specific legacy, and that the produce of the stock so appointed is liable to the debts of the testatrix, so that before the appointee can receive the stock, he must have the assent of the executor.

S. S. PARTRIDGE.

NOTE.—Some of the answers to this question are very good; but we do not find that any make the fact of the appointor being a married woman an important ingredient in the question. Perhaps some gentleman will consider whether or not that makes any difference.—EDS.

No. 12.—*Dower—Deed not executed by Purchaser* (p. 71).

Mr. Evans seems to have framed this question without much consideration. He does not inform us when B. was married; or whether the conveyance to him contains a declaration that his widow shall not be entitled to dower.

If B. was married before the 1st of January, 1884, his widow will be entitled, unless the conveyance is to uses to bar dower (3 & 4 W. 4, c. 105).

If since, and the conveyance contains a declaration against her right, she is barred, notwithstanding his not having executed the deed (*Fairley v. Tuck*, 6 Week. Rep. 9; 4 L. C. p. 209).

W. M. SHERRING.

No. 13.—*Burglary—Breaking, &c.* (p. 71).

If the breaking in is in the day time and the entry by night, I do not think that will constitute a burglary; but it is not necessary that the breaking and entering should be at the same time; the breaking may be on one night, and the entry on a subsequent night, provided the breaking be with the intent to enter. (see the cases of *Reg. v. Jordan*, 7 C. & G.; *Reg. v. Smith*, R. & R. 417.)

F. A. C.

No. 13.—*Burglary—Breaking and Entering* (p. 71).

The breaking and entry need not be done at the same time, for (4 St. Com. p. 177) "if a hole be broken one night, and the same burglars enter the next night through the same hole, they are burglars." Breaking and entry must both be effected by night to constitute burglary (4 Steph. Com. p. 174).

C. T.

No. 13.—*Burglary—Breaking and Entering.*

The breaking and entering must both be committed in the night time; if the breaking be in the day, and the entering in the night, or the breaking in the night, and the entering in the day, it is no burglary.

But the breaking may be on one night, and the entry on another, provided the breaking be with intent to enter, and the entry with intent to commit a felony (*R. v. Smith*, R. & R. 417; see *R. v. Jordan*, 7 C. & P. 432).

S. S. PARTRIDGE.

No. 14.—*Legacy to a Married Woman—Husband's Rights* (p. 71).

If the testator dies before the legacy bequeathed to his wife by the will of her father falls into possession, and he has received it, she will be entitled to receive it, notwithstanding any disposition which he might have attempted to make of it in his lifetime, even with her consent and concurrence (*Allday v. Fletcher*, 26 Law Journ. Ch. 519; 4 L. C. 84). If, however, the father's will was made on or since the 1st January, 1858, and contains no restriction or alienation by way of anticipation, the daughter and her husband might effectually dispose of her reversionary interest in the legacy by a deed acknowledged by her in the usual manner (20 & 21 V. c. 57).

It seems to me, from the statement of the case, that there is no expression whatever in the husband's will which can prevent his wife taking the legacy given to her by that will also. He might have intended that she should not receive it unless he had received the one given to her by the will of her father; but I think this intention does not appear on the face of the will. and, unless such intention can be gathered from the context,

nothing *dehors* can be admitted to prove it (*Hicks v. Sallitt*, 18 Jur. 315; *Haws v. Haws*, 3 Atk. 525; *Grey v. Pearson*, 3 Jur. N. S. 823).

Would it not, therefore, be advisable to get the husband to execute a short codicil, making the bequest to his wife conditional on his receiving the legacy under her father's will?

W. M. SHERRING.

NOTE.—The suggestion is a very good one; but would not the doctrine of election effect the same end?—EDS.

No. 17.—*Devise—Life Estate or Fee* (p. 72).

The executor is certainly bound to see the testator's debts paid so far as the assets in his hands will extend; and, I think, if the fund primarily liable should be insufficient for that purpose, he might sell so much of the real estate as is necessary to make up the deficiency. It has been repeatedly held, that where an estate is charged with the payment of debts, the executor has an implied power of sale, and can exercise it in order to carry out the clear intentions of the testator, and can make a good title to a purchaser (3 L. C. 84; 5 L. C. 5; *Dart's Vend.* 2nd ed. 324; and cases there cited).

W. M. SHERRING.

No. 17.—*Devise Life Estate or Fee* (p. 72).

Where a devisee whose estate is undefined, is directed to pay the testator's debts and legacies, he takes an estate in fee, on the ground that, if he took an estate for life only, he might be damnified by the determination of his interest before reimbursement of his expenditure, and the fact that actual loss is rendered highly improbable by the disparity in the amount of the sum charged relatively to the value of the land, does not prevent the enlargement of the estate (*Moone v. He.*, *Willes*, 440; *Doe v. Ho.*, 8 D. & E. 1). And where a devisee, who is directed to pay the testator's debts, is also appointed executor (as in the moot-question), the injunction is considered to have relation, not to his duty as executor to discharge the debts, but to his character of devisee of the land, therefore he takes a fee (*Dolton v. He.*, 6 Madd. 9; *Doe v. Ph.*, 3 Barn. & Adol. 753).

G. R. ROGERSON.

No. 19.—*Copyholds—No admission by Vendor* (p. 73).

The vendor usually pays the cost of his own admission, and also the expenses of surrendering the estate to a purchaser, unless both parties agree on adverse terms.

I don't think the conditions in the present case are sufficiently clear to alter the usual practice. It is said in *Dart's Vend.* 2nd ed. 55, "Particulars and conditions of sale, if intended to exclude the purchaser from what he would otherwise be entitled to, must be expressed in terms the most clear and unambiguous; if there be any chance of reasonable doubt or misapprehension as to the meaning, the construction will be in his favour."

Might not the purchaser reasonably have supposed that the vendor's administration was not necessary, that he had merely a power of sale, and could therefore convey without being admitted? (*Holden v. Preston*, 2 Wils. 400).

I certainly think the vendor must put himself in the position, at his own

expense, to execute an effectual surrender, and when he has attained that position, the purchaser must simply pay the expense attending the making of the surrender; not of the vendor acquiring the right to do so. Suppose the validity of the devise was questioned, must the purchaser pay the cost of supporting it? If there be any doubt as to the liabilities of either party under the conditions of sale, Mr. Dart says the purchaser must have the benefit of it.

W. M. SHERRING.

No. 21.—*Trustee—Misappropriations—Liability* (p. 73).

I am of opinion that if one of the trustees misappropriates his share of the trust moneys, both trustees are liable, and it has been held that one of the trustees who was abroad with his regiment was equally liable. It has also been held, that, where two trustees had power to alter and vary a trust fund, sold it out for that purpose, but allowed the produce to be received by one alone, that the other who failed to show that the fund was properly invested was bound to pay the amount into court (*Bryne v. No.*, 13 Beav. 336; *Wigglesworth v. Wi.*, 16 Beav. 269; *Thrush v. La.*, 20 Beav. 116).

S. W. TURNER.

No. 22.—*Master and Servant—Written Contract* (p. 73).

The words of the statute are, "That no action shall lie upon any agreement that is not to be performed within one year after the making thereof unless it be reduced into writing and signed." Accordingly a contract for a year's service to commence at a day subsequent to the making of the contract ought to be in writing. In the case of *Bracegirdle v. He.* (1 B. & A. 722), the plaintiff, on the 27th of May, made an agreement to enter the defendant's service on the 30th of June then next, to serve the defendant for twelve months. It was held, that as the plaintiff was not to enter into the service until the 30th of June, and as the service was to continue for one year from that day, the contract could not be performed within a year from the time when it was made, and that, therefore, by the 4th section of the Statute of Frauds, the contract not being in writing, no action could be maintained on it.

So also a contract for more than one year's service must be in writing, though it may be determined (as in the moot-question) before the expiration of the year, on the happening of a given event (*Giraud v. Ri.*, 2 C. B. 835).

G. R. ROGERSON.

CORRESPONDENCE ON MOOT POINTS.

The following are additional names to be added to the List of Correspondents on the *New System*, ante, p. 36:—Mr. J. G. B. Edwin, No. 99, Lisson-grove, Marylebone, London; Mr. S. J. Elliott, Trapezium-cottage, Southsea; Mr. F. Michelmores, Exeter; Mr. H. M. Ogle, The Gringrog,

near Welchpool; Mr. W. M. Sherring, No. 57, Great Russell-street, London; Mr. James Walker, Messrs. Challinor, Badnall, & Co., Solicitors, Leek; Mr. C. F. Wilson, R. Broatch, Esq., Solicitor, Keswick; Mr. Wm. Whittan, 22, Wood-street, Northampton.

We find that the new system is much approved, and we feel little doubt that in a few months we shall have a considerable list of names, but we know from experience that it is not till after some persuasion that articulated clerks will join in any new plans, however beneficial they may be.

There is one point to which we beg serious attention, and that is, that the moot points should be sent up much *earlier* in the month. This month (which is a very short one) the points were sent up so late, that we have not yet received answers to them except from two or three of the earliest on the lists. We cannot help thinking that this might be remedied, and certainly no effort on our part shall be wanting to prevent the inconvenience which we know exists on account of there not being proper time for answers. We have to thank several correspondents for suggestions as to bettering the system, and they shall have our best attention, but we quite agree with them that, unless the points be sent earlier, the benefits of the system will be much diminished. There cannot be a doubt that much good must arise to every one taking part in the furnishing points and answers, and we think each one should do his best, not only for his own sake, but also out of a desire to benefit other articulated clerks.

LIST OF CORRESPONDENTS.

(Old System).

We have been obligingly informed that the following errors occur in the Old List of Correspondents at p. 31, and our readers will please make the necessary alterations:—

Mr. Arbouin's reference should be Messrs. "*Few & Co.'s*" not "*Pe*," as stated therein. After the name of Mr. Cooper should be added "*Solicitor*." Mr. Horton's address is, I believe, "*Messrs. Pinson & Best's*," not "*Lee Penson & Best*," Mr. Lee being, I believe, no longer a member of the firm. Mr. Lavender's name is *J. W. S. Lavender*, not *P. W. S. Lavender* (see pp. 29, 30). Mr. Norton's address is *Louth, Lincolnshire*, not "*Bincolnshire*." After the name of Mr. Tree, of Worcester, should be added "*Solicitor*," as also, I think (though I am not sure), after that of Mr. Jones, of the same place. A correction of these mistakes may prevent confusion.

TITLES OF ANSWERS.

We should feel extremely obliged if gentlemen answering the Moot Points would put the *headings* to their Answers, as it is a great convenience to be able to see at once to which the answers refer. We should not be sorry if those who send the Points would take the trouble to insert the headings to them, though we do not so much care about this, as having them to the Answers.

Notices of New Books.

COOTE'S COMMON FORM PRACTICE OF THE COURT OF PROBATE.

The Practice of the Court of Probate, in Common Form Business, by HENRY CHARLES COOTE, Proctor in Doctors' Commons, Author of "*The Practice of the Ecclesiastical Courts*;" with the *Probate Court Acts of 1857 & 1858, the Rules, Forms, and Fees, of 1857 and 1858, and a very full collection of Original Forms, prepared for the present edition*; also a *Treatise on the Practice of the Court in Contentious Business*, by THOMAS H. TRISTRAM, D.C.L., Advocate in Doctors' Commons, and of the Inner Temple. Second Edition. London: Butterworths. 1859. 18s.

This is the second edition of a work which we before noticed on its first appearance, and as that is so short a time ago, it should seem that the author was not mistaken in supposing that the profession required some assistance, and was willing to hail a production which promised to help them safely through the unknown and tortuous channels leading to the then new haven denominated the Court of Probate. Though so short a time has elapsed since the primal edition appeared, and it might at first sight appear that there could be little difference between the two editions, yet further consideration, and a perusal of the second edition, will convince the reader that in this instance, *second sight* is a corrective of prior misconceptions. Thus, taking what is at once obvious to the eye, the mere comparison of the size of the works suggests that some considerable additions must have been made, as from a somewhat small volume the second edition has become a *magnum opus*. On further scrutinizing the latter, we find that this increase in size has been occasioned by, in the first place, the insertion of the two acts of 1858, and the New Rules, which are not only noticed in their proper places, but are also given at length in an additional appendix. In the next place, there is a *Treatise on the Practice of the Court of Probate in contentious business*—this being due to Mr. Coote's able collaborateur, Dr. Tristram, the co-reporter of the regular reports of the Court of Probate, which we have elsewhere noticed. In regard to the non-contentious business, large additions have been made to the text of the former edition, and the whole has undergone a rigid revision. References have been made to all the reported decisions of Sir Cresswell Cresswell upon points of common form; and many directions given from time to time by that able judge to the officers of his court have also been inserted.

All the rules of 1857 and 1858 have been incorporated in the text; the anglicization or resealing of Irish and Scotch grants is treated in detail; and some entirely new chapters have been added upon subjects not before touched upon.

The principles and practice of citations are explained, whether they are issued for the purpose of obtaining a representation, or for the purpose of enforcing from representatives the inventories and accounts, over which the

Court of Probate retains the same jurisdiction which the dissolved courts possessed.

The practice in taking out and attending summonses before the judge in chambers is also treated of.

A detailed statement and enumeration of the persons who are competent by law to take oaths and bonds in the Court of Probate at home and abroad is given.

Full practical directions for obtaining probates and administrations in all their varied forms, and for altering and resealing them, will also be found: in these directions care has been taken to show the mode by which the privilege of "The Confirmation and Probate Act, 1858," can be obtained to a grant about to be issued by the English court.

A complete collection of original forms—viz., of oaths, affidavits, instruments, and citations, which do not appear in the schedules annexed to the rules of 1857 and 1858, has been appended to the present edition.

To facilitate the reader in his references, the tables of probate and administration duties for England, Scotland, and Ireland have been given."

We have not room for much extract from the work, and, indeed, from its nature, it is not adapted for such a purpose, but we give a short selection (omitting notes and references) from that portion of the work which treats of the practice of the court in contentious business.

"*Regular suits.*—The more formal and regular suits in the Court of Probate are—(1) Suits for obtaining probate, or administration with the will annexed, in solemn form; and (2) interest causes.

"OF SUITS FOR OBTAINING PROBATE IN SOLEMN FORM.

"There are two kinds of probate—viz., probate in common form, and probate in solemn form, of law.

"*Probate in common form.*—Probate in common form has been fully treated of in the former part of this work. For our present purpose it is sufficient to observe that it is granted in the registry without any formal procedure in court, upon an *ex parte* application, made by the executor.

"*Probate in solemn form.*—Probate in solemn form is in the nature of a final decree pronounced in open court. To obtain such a decree the following are the ordinary requisites:—

"*Ordinary requisites for obtaining probate in solemn form.*—1st. That the executor should cite the next of kin and other parties entitled in distribution to the personal effects of the deceased in case he shall have died intestate, to appear in the cause (Form No. 4 (1857)), unless they shall by anticipation have become parties to it, by having entered a *caveat* against the grant, and an appearance upon the *caveat* being warned.

"2nd. That the executor should propound the will in a declaration (see Form No. 8 (1857)).

"3rd. That the court shall be satisfied, upon the examination of one or more witnesses, that the will was duly executed, and is the will of a competent testator.

"Difference in effect between probate in common and solemn form—Probate in common form revocable.—The difference between the effect of probate in common and in solemn form is this:—

"Probate in common form is revocable. An executor who takes probate in common form may subsequently, at the instance of any party whose interest is affected by the will, and without limitation as to time, be required to bring in the probate, and be put upon proof of the will in solemn form.

"Probate in solemn form generally irrevocable.—Whereas probate in solemn form when once granted is, with one exception, irrevocable as against all persons who were cited to see proceedings, or who can be proved to have been privy to those proceedings.

"But if a will of subsequent date is afterwards discovered, the probate of the earlier one, though granted in solemn form, would be revoked.

"It is now proposed to consider probate in solemn form under several heads."

The work is one which appears to us to be quite indispensable to the practitioner, who will thank Messrs. Coote and Tristram for affording such assistance in the transaction of business in the Court of Probate. Certainly, no solicitors need, with the aid of this book, fear to engage in even "contentious" business, which, if the popular notion be correct, must be so dear to them in every shape.

MACKENZIE'S BOOK-KEEPING.

A concise and easy System of Book-keeping for Solicitors, &c.; which has been in use for nearly fifty years in the Offices of some of the most respectable Firms in London (and superintended by the Author during the greater portion of that period): to which are prefixed some Observations on Single and Double Entry, and the general principles of Book-keeping; a few remarks on the History of Accounts and Book-keeping, and an Explanatory Introduction; and to which are Appended an Exposition of Commercial and Monetary Terms; certain Notes on the subject of Costs; a few Observations on Accounts; some Remarks on the Subject of Interest, &c. By WILLIAM MACKENZIE, Solicitor. 6s. London: Law Times Office.

The above title almost supersedes any remarks on our part, and we are not unwilling that they should do so, for we confess that we are not very much skilled in the mysteries of "Single" and "Double" Entries, and are happy to say that our fee book does not appear to require that we should enter into the consideration of these matters. But to solicitors the case is very different, and we really think there is some foundation for the proposal put forward, that every articulated clerk should be required before admission to shew some acquaintance with a proper system of book-keeping. We are, however, quite conscious that there is a wide difference between a knowledge of a thing and the putting it in practice, and are quite ready to admit that the want of book-keeping so often animadverted on in the bankruptcy and insolvency courts has arisen, in many instances, from a feeling

that it is the best policy: that the books, if kept, would tell a tale not at all convenient to the parties. We trust, however, that there are few solicitors who would from such a cause fail to keep proper books, but, unhappily, it is notorious that from carelessness, or want of skill, or of prudence, very many solicitors do not adopt book-keeping as an indispensable matter, contenting themselves in some cases with mere memoranda on the papers, and in very many instances with entries in an ordinary day-book. However, there is no doubt that the evil results of such a looseness are greatly aggravated by the mode in which the solicitor deals with the moneys of his clients. Standing as he does frequently in the relation, or, at least, in the position, of a banker to his clients, he ought to be especially careful to keep proper accounts of the moneys, however negligent he may choose to be in regard to his items for business done and money disbursed for his clients. We find ourselves launching out into a theme quite beyond our level, and are reminded that it is Mr. Mackenzie's book we have to notice, and on looking at the page next to the title (for to that extent we have proceeded) we feel at once rebuked by a quotation which states that "book-keeping is both an art and a science;" a circumstance not calculated to give us a desire to be encumbered with accounts. Proceeding further on in the book, we find some very readable matter respecting the utility and method of book-keeping, and then we arrive at the main portion of the author's labours, in which is set forth, in many examples, the mode of keeping the day or bill-book, the cash-book, the ledger, the petty cash-book, and the disbursement book. There then follow some pages of matter on the following subjects:—Exposition of commercial and monetary terms; notes on the subject of costs; recognised and established charges allowed in conveyancing; legal measure (which, of course, is a just measure); a few observations on accounts; some remarks on the subject of interest; a few useful arithmetical and tabular memoranda; form of a rental; as to receivers' accounts; as to executors' account.

From that portion of the work which contains observations on single and double entry, and the general principles of book-keeping, we select the following as being most appropriate to the object of the work:—

"Book-keeping is the art of recording and classifying the transactions of persons engaged in business, and in keeping accounts of their property and debts.

"In book-keeping by single entry, each item in the ledger is entered only once, to some particular account, hence the term 'single' entry. In 'double' entry each item is posted to two different accounts in the ledger, that is to say, an item entered to the debit of one account in the ledger, is entered to the credit of some other account therein, and *vice versa*, so that the accounts should always balance, that is, the debits and credits of all the accounts taken together should be equal in amount. Their correctness is, from time to time, ascertained by what is called a 'trial balance,' in which all the debits are put in one column and all the credits in another, and when the amounts of both columns are equal, the accounts are considered correct.

"Single entry is suitable for professional men, retail dealers, tradesmen, manufacturers, &c.

"Double entry is specially applicable to merchants.

"Various books are used according to the necessities of the business carried on.

"In single entry, the day-book, cash-book, and ledger are the three principal books.

"In double entry, the chief books are the waste-book, journal, and ledger. The waste-book is now, however, generally subdivided into various books, such as the day-book, bill-books, invoice-books, sales-book, warehouse ledger, or stock-book, cash-book, adventure-book, &c. There are also other subsidiary books, such as the account current book, petty cash-book, day-book, cash sales-book, order-book, letter-book, &c.

"The journal is made up, or posted, from the waste-book and its subdivisions, and is a technical transcript thereof, to facilitate the entry of the items into the ledger.

"The ledger accounts, in double entry, are designated, according to their nature, either personal or impersonal, and are generally divided as follows—viz., stock, cash, bills receivable, bills payable, merchandise, accounts with persons, profit and loss and balance. The merchandise and profit and loss accounts are generally subdivided into different branches.

"The ledger contains a synopsis or condensed summary of the transactions connected with the particular business carried on. It has been well called 'a book of results,' in which the particular facts scattered throughout the primary books are collected, arranged and classified, and is a 'tabular centralisation of the subordinate books and the final instrument of the balance sheet.'—Foster's *Double Entry Elucidated*.

"Balancing may be said to be the key to book-keeping, and the correctness of the result depends entirely upon the accuracy with which we have performed that process. The object in balancing is to ascertain the gains or losses for any particular period, and the present amount of assets and liabilities. The present net amount of assets must, of course, be equal to the net stock at the commencement of business, or at any subsequent period of stock-taking, or 'rest,' together with the net profits from that time. That proof of the correctness of the accounts is worked out and made to appear by the 'stock,' 'profit and loss,' and 'balance' accounts, and when they agree the proof is considered complete."

We notice at p. 151 a rather singular error for a solicitor to make, which is this, that Easter and Trinity Terms are stated to be invariable, which is well-known not to be the case; indeed, according to Mr. Mackenzie, Easter Term this year ought to end on the 8th of May, and Trinity begin on 22nd of May and end on 12th of June, which, however, are in flagrant contradiction to the almanac for this year.

We think there is little doubt that the work is one deserving the attention of every solicitor, and as the author is himself a professional man, it has an advantage over those productions which treat of book-keeping in general, because there are so many peculiarities in the business of a solicitor requiring to be met by special information.

Summary of Decisions.

EQUITY AND CONVEYANCING.

BROKER.—*Evidence—Custom of brokers.*—*Semble*, the court will take judicial notice of the custom of brokers, as part of the general custom of merchants. *Jones v. Peppercorn*, 28 Law Journ. Ch. 158.

DISCLAIMER.—*Costs—Judgment creditor—Parties.*—Where a mortgagee files a bill for foreclosure against creditors by judgment and otherwise, having incumbrances subsequent to his, and such creditors disclaim, some on service of the copy of the bill, and some by answer, those only who immediately disclaim, on notice of the suit being instituted, are entitled to their costs. *Bradley v. Borlase*, 7 Week. Rep. 125.

FEME COVERT.—*Legacy to wife—Protection order.*—A married woman, whose earnings and property were protected against her husband and his creditors, by an order made under the 20 & 21 V. c. 85, s. 21, on account of his desertion of her, will be ordered the payment of a legacy given to her in general terms. *In re Kingsley's Trusts*, 28 Law Journ. Rep. Ch. 80.

HUSBAND AND WIFE.—*Agreement—Specific performance—Voluntary deed—Illegal consideration.*—A covenant by a married woman having property settled to her separate use, without power of anticipation, is not a sufficient consideration to support an agreement otherwise voluntary. *Walrond v. Walrond*, 28 Law Journ. Ch. 97.

INJUNCTION.—*Equitable plea—C. L. P. Act, 1854—Arrangements between debtors and creditors.*—Where an action is brought for breach of covenant, and the defendant at law has only an equitable defence, he is not compelled under the C. L. P. Act to make that defence the subject of an equitable plea. Where an arrangement between debtor and creditor amounts to an actual bankruptcy, that may be pleaded as if the debtor were actually bankrupt; but on bill filed to restrain an action for damages for breach of covenant in a deed prior to such arrangement, the court will not compel the defendant to plead an equitable plea, but will grant an injunction on the terms of the defendant giving a judgment applicable to the case of an action for damages. *Kingsford v. Swinford*, 7 Week. Rep. 215.

ISSUE.—21 & 22 V. c. 27 — *Issue to law.*—By the 21 & 22 V. c. 27, a judge of the Court of Chancery may summon a jury, and decide issues of fact, without the necessity of sending the suitors to a court of common law. It has been held, by Vice-Chancellor Wood, that upon an application for an issue, if either party desires to have the issue tried before a court of common law, the trial, except under special circumstances, will not be directed to take place before a jury summoned by the Court of Chancery. *Peters v. Rule*, 7 Week. Rep. 171.

JUDGMENT.—*Conveyance by mortgagor and mortgagee—Determinable lien*—18 & 19 V. c. 15, s. 11 [1 L. C. 428].—By the 18 & 19 V. c. 15 s. 11, a purchaser or mortgagee paying off a prior mortgage is not to be affected by judgments against such paid-off mortgagee (1 L. C. 429). In the

following case (where the purchaser seems to have overlooked this statute) it was held, that, if a mortgagor sells mortgaged estate, and pays off the mortgagee, the estate in the hands of the purchaser ceases to be affected by a judgment which had been registered against the mortgagee. *Greaves v. Wilson*, 28 Law Journ. Ch. 103.

LANDLORD AND TENANT.—*Repairs—Covenants—Implied liability.*—A tenant, under a lease which contained a covenant to repair, and leave in good repair, all buildings and erections then standing or to be erected during the term, built a farm-house partly on the land demised and partly on the waste adjoining belonging to the lessor. On the decease of the tenant, upon a claim by the landlord for dilapidations: Held, that his acquiescence in the act of the tenant prevented his dispossessing him of the premises built on the waste, and that it must be assumed by implication that the covenant to repair extended to the whole building, and that the landlord was entitled, in a suit by administration of the tenant's estate, to establish a claim for dilapidations. *White v. Wakley*, 28 Law Journ. Rep. Ch. 77.

LEGACY.—*Children—Advances in satisfaction—Presumption.*—If a presumption arises that payments by a testator to his children were made in satisfaction of legacies they would become entitled to under his will, it is not rebutted by their declaring such payments to have been gifts, when the belief is unsupported by any testimony of the intention of the testator. *Schofield v. Heap*, 28 Law Journ. Rep. Ch. 104.

LEGACY.—*Donatio mortis causa—Direction to deliver after death.*—A dying person told her servant to take the key of a dressing case in her room and keep it, and immediately after her death to deliver the trinkets in the box to a person whom she named: Held, not to be a valid *donatio mortis causa*. *Powell v. Hellicar*, 7 Week. Rep. 171.

MISTAKE.—*Joint stock company—Person falsely supposing himself to be a shareholder.*—The following is a good example of the exercise by courts of equity of their jurisdiction to cancel deeds executed under a mistake. The plaintiff, under the impression that he had inherited certain shares in a joint stock company, as heir at law to his father, executed a deed indemnifying the directors in respect of certain advances. He afterwards discovered that, by a clause in the deed of settlement, the shares were personal estate, and, therefore, that he was not entitled to them: Held, that the plaintiff was entitled to be relieved against the deed, as having been executed under a mutual mistake. *Broughton v. Hutt*, 7 Week. Rep. 166.

MORTGAGE.—*Notice of mortgagor's contract—Injunction—Charterparty—Mortgage of ship—Specific performance.*—One of the Vice-Chancellors refused to decree specific performance of a charterparty, or to grant an injunction at the suit of the charterer to restrain a mortgagee of the ship, who had notice of the charterparty, from making a sale in pursuance of his power of sale contained in the mortgage deed; but the Lords Justices, considering that where property is contracted to be used in a particular manner, and a purchaser buys that property, with notice of that contract, he is bound not to use it otherwise than in accordance with

the contract: Held, that the plaintiff was entitled to an injunction to restrain the mortgagee from exercising his power of sale and from interfering with the ship on her voyage, the injunction to continue till the hearing of the cause, and the plaintiff undertaking to be answerable in damages. *De Mattos v. Gibson*, 28 Law Journ. Rep. Ch. 165.

MORTGAGE.—*Priority of equitable and legal mortgages*—*Solicitor—Notice—Mortgagee—Negligence in not obtaining deeds or the legal estate.*—The following decision is not novel, but it is well calculated to draw attention to the dangers attendant on equitable mortgages (see *ante*, pp. 40, 41). The Lord-Chancellor has confirmed the decision. Where a mortgagor is a solicitor, and acts for himself in the mortgage, although that is a constructive solicitorship in the transaction, on the authority of *Hewitt v. Loosemore* (9 Hare, 549), it is not constructive notice to the mortgagee of a prior mortgage effected by the mortgagor. In fact, the mortgagor is not, in such a case, to be considered as the solicitor of the mortgagee for the purpose of affecting the latter with notice, unless he consents that the mortgagor should act as his solicitor in the transaction. Failure in an attempt to obtain deeds by a second mortgagee, who gets the legal estate, does not amount to negligence, or assisting the mortgagor to commit a fraud. In other words, where a *bonâ fide* inquiry for the title deeds is made by a mortgagee, and a reasonable excuse is given for their non-production, the mortgagee is not affected with notice of what he might have learnt on further inquiry. *Espin v. Pemberton*, 7 Week. Rep. 123, 221.

MORTGAGE.—*Undue exercise of power of sale—Redemption suit—Under value.*—In the absence of any allegation that a power of sale in a mortgage deed has been improperly or collusively exercised by the mortgagee, the averments that the property was sold at great undervalue, and ought to have been sold in lots; that the mortgagee, while in possession, had, by mismanagement of the property, rendered himself liable to an account for wilful default, and that the sale had been made pending a suit by the mortgagor to redeem, which suit was duly registered as *lis pendens*—raise no equity to support a bill to set the sale aside, and enable the mortgagor to redeem. *Adams v. Scott*, 7 Week. Rep. 213.

MORTGAGE.—*Receiver—Attornment—Power of distress—Practice—Disclaimer.*—An attornment by mortgagor to a receiver, with power of distress, does not create the relation of landlord and tenant where the receiver has no reversion in him. Where the truth appears by the recitals in such a deed, the mortgagor's assignees are not estopped from denying the tenancy. Such a power of distress is a mere license to enter and seize the mortgagor's goods, and, after his bankruptcy, is inoperative against his assignees. Where plaintiff claims a fund, and names two defendants as adverse claimants on different grounds, one of the defendants who disclaims has no right to an inquiry against the other defendants, if the plaintiff's claim is disallowed. *Jolly v. Arbuthnot*, 7 Week. Rep. 127.

NUISANCE.—*Injunction—Acquiescence—Extension of nuisance.*—Acquiescence in the erection of works of a noxious character, but which are not, or are not supposed to be seriously injurious, does not imply acquiescence

in any extension of the works, by which they may become, subsequently, deleterious. In such a case, equity will not interfere to stay an action for damages, in respect of the nuisance. *Semble*, also, that it would not interfere to restrain the nuisance, it being, in general, impossible to restore the parties to the position which they occupied at the time when the acquiescence was given and acted on. *Bankart v. Haughton*, 7 Week. Rep. 192.

PARTNERSHIP.—*Appointment of receiver.*—We have, in the "LAW PROPOSITIONS," pp. 31, 32, given some propositions applicable to the appointment of receivers in partnership cases, and we propose now to illustrate this by a notice of the case of *Baxter v. West*, and the judgment of Vice-Chancellor Kindersley therein. His Honour observed, that a receiver operates as an injunction, and the principle on which courts of equity act with regard to the appointment of a receiver in partnership cases is this: It will not appoint one upon an interlocutory motion, unless it sees that there is an actual present dissolution arising from the acts of the parties, or that at the hearing it would, upon the merits, dissolve the partnership. If the partnership is a continuing one, and may continue, it will only direct an account. If partners agree upon a term for the partnership to continue, neither partner can dissolve the partnership until the end of the term. But if there be misconduct, a court of equity can and will, before the time expires, appoint a receiver, and the court, though disinclined to such orders, will, on a proper case being made, appoint a receiver on an interlocutory application. But the case then to be made must not be one raising merely a question whether there is or is not misconduct as between the partners. The court must, especially if there be no term, see its way to a dissolution at the hearing, and it must be remembered that where there is a dissolution, the appointment of a receiver is *primâ facie* a matter of course. The question whether there was to be a partnership for a term of years is one proper for the hearing, and is not one that the court will try on an interlocutory application of this sort. It appeared that the plaintiff filed a bill for dissolution of a partnership entered into with the defendant, and moved for a receiver. A question was raised upon the evidence as to the conduct of the parties, and as to whether there was any term fixed for the expiration of the partnership: Held, that these questions must be decided at the hearing, and that the court, not being able to say that a dissolution must be decreed at the hearing, would not appoint a receiver, which would operate as an injunction. *Baxter v. West*, 28 Law Journ. Ch. 169.

PUBLIC COMPANY.—*Joint stock company—Partnership—Promoter—Liability—Contribution.*—Where a number of persons, some acting on behalf of the others, endeavour to establish a joint stock company, purchase property, provisionally register, but eventually fail in carrying it out, that is not a partnership, but an ordinary inchoate association; and a bill filed for general contribution against a party not sanctioning expenses, but furnishing by his acts a colour to a right to have an account, dismissed without costs; but with respect to a party not so acting, with costs. *Hamilton v. Smith*, 7 Week. Rep. 173.

TRUST FOR PAYMENT OF DEBTS.—*When direction to agent revocable or not—Demurrer—Trust—Privity—Bill by creditor.*—Where money is placed in the hands of an agent, with direction, or, upon trust, to pay debts, that is a voluntary act, and, as such, revocable; and if creditors file a bill under such circumstances, a demurrer will lie. But if there is an agreement between the party directing payment, and the party directed to pay, it is not revocable, but becomes a trust; and demurrer to a bill filed by a creditor, alleging such agreement and trust, overruled. *Lawrence v. Campbell*, 7 Week. Rep. 170.

WILL.—*Construction—Precatory trust.*—The court will look at the circumstances existing at the date of a will, and will, if necessary, construe words importing a trust as expressions of recommendation and confidence. *Quayle v. Davidson*, 7 Week. Rep. 164.

WILL.—*Construction—Gift of personalty to A. and her children—Wild's Case not applicable.*—In *Wild's Case* (6 Co. Rep. 17), it was held, that a devise of real estate to A. and his wife, and after their decease to their children, passed an estate tail. Notwithstanding *Stokes v. Heron* (11 Cl. & F. 161), the Master of the Rolls, in the following case, has held that *Wild's Case* does not apply to personalty. There a gift was made to A. and her children, but if they should die without issue, over, and it was held to pass a life interest to A., with remainder to the children, upon the ground that *Wild's Case* does not apply to personalty. *Audsley v. Horn*. 7 Week. Rep. 125.

EQUITY PRACTICE.

ADMINISTRATION SUIT.—*Two suits—Lancaster Court of Chancery—Staying proceedings.*—In the following case, the Master of the Rolls held that a decree obtained in the Court of Chancery of the County Palatine of Lancaster is not a ground for staying proceedings in an administration suit in the superior Court of Chancery, if part of the estate consists of land beyond the limits of the Lancaster jurisdiction; but the Lords Justices ordered that the proceedings in the superior Court of Chancery should be stayed upon giving to the plaintiffs in that suit the conduct of the Lancaster suit, they appearing in the duchy court for that purpose. *Wynne v. Hughes*, 7 Week. Rep. 197; 32 Law Tim. Rep. 326.

COUNSEL'S FEES.—*Solicitor—Jurisdiction.*—The Court of Chancery has no jurisdiction to compel a solicitor whose bill has been taxed and ordered to be paid, to pay fees to counsel included in such bill. *Re May (a Solicitor)*, 7 Week. Rep. 126.

FORECLOSURE SUIT.—*Sale under 15 & 16 V. c. 86, s. 48—Form of decree.*—In a foreclosure suit, where an incumbrancer, subsequent to the plaintiff, seeks to have the mortgaged property sold, and the plaintiff does not consent to such sale, the court not only requires the subsequent incumbrancer to deposit a sum sufficient to cover the expense of an abortive attempt to sell, but fixes a reserved bidding sufficient to cover the amount found due to the plaintiff. *Whitebread v. Roberts*, 7 Week. Rep. 216.

SETTLED ESTATES.—*Leases and Sales of Settled Estates Act*—*Power of leasing.*—The court will make an order vesting very extensive leasing powers in trustees, without a reference to the conveyancing counsel or an inquiry as to the propriety of the powers. *Re Jones's Settled Estates*, 7 Week. Rep. 171.

SOLICITOR AND CLIENT.—*Bill of costs—Pressure—Taxation*—6 & 7 V. c. 73, s. 41—*Payment of bill by mortgagor.*—The following case is one of considerable importance to solicitors in respect to the taxation of bills of costs which have been paid. Where payment of a solicitor's bill of costs has been required of a mortgagor at the time of paying off a mortgage security, under such circumstances of pressure as show that if payment had been postponed the consequences to the mortgagor might have been very serious, or where, apart from the question of pressure, such a bill contains improper items, or charges which the mortgagor had not sufficient time to investigate at the time when payment was required, the court will make an order for taxation. *In re Kinneir*, 7 Week. Rep. 175.

SUMMONS IN CHAMBERS.—*Abandoned summons—Costs of.*—Where a summons, taken out at chambers, was adjourned into court, and then abandoned by the plaintiff, the defendant was held entitled to the taxed costs of such summons. *Lister v. Bell*, 28 Law Journ. Ch. 162.

COMMON LAW.

BILLS OF SALE ACT.—*Registration—Post nuptial settlements*—17 & 18 V. c. 36.—A post-nuptial settlement requires to be registered under the Bills of Sale Act, and is not within the exception of marriage settlement in sec. 7. *Fowler v. Foster*, 32 Law Tim. Rep. 293.

FRAUDS, STATUTE OF.—*Parol agreement—Evidence—Costs of disputing mortgage.*—Where it is proved that A. applies to B. to lend him money, which he does, but without any written agreement, and A. purchases for himself, with the money, some property, which is conveyed absolutely to B.'s nominee, B. cannot, as against A., say there is no sufficient agreement in writing within the Statute of Frauds. Where a defendant disputes, without just cause, a mortgage, he will be ordered to pay the costs of the suit up to the hearing. But if the plaintiff has, by his acts, brought about the facts complained of at the hearing, the balance of the evidence being in his favour, there will be no costs up to the hearing. *Lincoln v. Wright*, 32 Law Tim. Rep. 291.

GAMING AND WAGERING.—*Share transactions*—8 & 9 V. c. 109—*Account stated.*—On the 29th of July, the defendant directed the plaintiff, who was a stock broker, to buy him certain railway stocks for the account of the 14th August, but without any intention of taking a transfer thereof. The stock was bought by plaintiff's agent, and the bought notes sent to the defendant. On the 13th August he directed plaintiff to sell all. The sale was effected through the same agent. On the 14th, the plaintiff delivered his account to defendant, who said that he would not pay; that he knew the plaintiff had no legal claim on him; but that he considered it a debt

of honour, which he would pay at a future time. In an action by plaintiff for the differences on the price and his commission : Held, that the plaintiff was entitled to recover ; that the contract did not come within the 18th section of 8 & 9 V. c. 109, and was not void ; that the account delivered, and the admission of the defendant, were evidence to support the account stated. *Ashton v. Dakin*, 32 Law Tim. Rep. 800.

GOODS SOLD AND DELIVERED.—*Ship built beyond seas—Delivery.*—The question in the following case is a technical one, namely, whether the facts warranted a claim as for goods bargained and sold or sold and delivered. It appeared that the defendant, residing in London, buys of the plaintiff a ship, which the plaintiff builds beyond seas. The defendant writes to the plaintiff, ordering him to provide a captain and crew, to load the vessel, and to insure her. The plaintiff carries out the order, and the captain and crew sail in the vessel, which is lost on the voyage. The plaintiff may recover the price of the vessel under a count for goods sold and delivered. *Hargard v. Hodges*, 7. Week. Rep. 204.

INSURANCE.—*Life policy—Exception in condition.*—A life policy contained a condition that the policy would be void if the life assured died by suicide ; but if any third party had acquired a *bonâ fide* interest therein by assignment or by legal or equitable lien for a valuable consideration, or as security for money, the policy, to the extent of such interest, was to be valid : Held, that an assignment by the operation of the bankruptcy law was not within the exception. *Jackson v. Foster*, 7 Week. Rep. 202.

LIBEL.—*Apology, and payment of 40s. into court*—6 & 7 V. c. 96, s. 2—*Jury giving 1s. damages—Costs.*—In an action for libel published in a newspaper, defendant published an apology, and paid 40s. into court by way of amends for the injury, under the 6 & 7 V. c. 96, s. 2. Plaintiff proceeded to trial, and recovered by the verdict of the jury 1s. damages : Held, that the plaintiff was not entitled to costs. *Lafone v. Smith*, 32 Law Tim. Rep. 800.

LIBEL.—*General and special damage—Evidence.*—The libel, the subject of the action, appeared in defendant's newspapers in the form of an advertisement. On the 4th Oct., placards containing copies of the advertisement were also extensively posted, and distributed through the town. The defendant was served with the writ on the 15th of October. On the trial, the learned judge admitted evidence of damage accruing to the plaintiff after action brought, and told the jury to consider what was the natural consequence of defendant's act, without reference to an other publication : Held, that the evidence was properly admitted, and that the directions were right. *Harrison v. Pearce*, 32 Law Tim. Rep. 298.

COMMON LAW PRACTICE.

COSTS.—*Interlocutory costs—Set-off—Effect of taking in execution under a ca. sa.*—The plaintiff, having obtained judgment in two actions, issued writs of *ca. sa.*, and arrested the defendant upon one, and lodged a detainer upon the other. The writs being informal, application was made by the

defendant for his discharge, and a cross application was made by the plaintiff to amend the proceedings. This was accordingly ordered to be done, with a direction that the plaintiff should pay to the defendant the costs of the two applications. The defendant remained in custody: Held, that these were interlocutory costs, which the plaintiff was not bound to pay to the defendant, but which the court might, by virtue of its equitable jurisdiction, to prevent its process being abused, order to be set-off against the judgments, notwithstanding that the defendant had been taken in execution. The mere taking in execution of a debtor does not extinguish the debt, and the expression to that effect in the judgment in *Beard v. Mc'Carthy* (9 Dowl. 136) cannot be supported. The power of the court to order a set-off against a judgment debt, for which the debtor is in execution, only extends to matters arising out of the same suit as that in which the judgment was obtained. *Simpson v. Hanley* (1 M. & S. 696); and *Peacock v. Jeffery* (1 Taunt. 426), are overruled by *Taylor v. Waters* (5 M. & S. 104). *Thompson v. Parish*, 7 Week. Rep. 210.

PROBATE AND DIVORCE.

DISSOLUTION OF MARRIAGE.—*Decree for dissolution—Co-respondent—Costs—Practice*—20 & 21 V. c. 85, s. 34.—On application to the full court for a decree of dissolution on the verdict of a jury, the marriage must be proved, if it was not put in evidence at the trial by the jury. Generally, where the husband's petition is opposed, and the verdict and decree are in his favour, the co-respondent will be condemned in the whole costs of the proceedings. Where the wife's taxed costs up to the trial, and a sum of money to meet her further expenses, had been paid into court by the husband before the trial was allowed to proceed, the court, after decreeing dissolution, and on motion that such sum should be at once paid out to the husband, directed such sums to remain in court till the whole costs should be taxed. *Evans v. Evans*, 32 Law Tim. Rep. 244.

JUDICIAL SEPARATION.—*Pleading—Insufficient statement of cruelty.*—A petition for judicial separation, on the ground of cruelty, alleged, that "on the 26th day of July, 1848, and other days between that day and the 24th day of July, 1858, the respondent was guilty of cruelty to the petitioner." Held: That this was not sufficient, but that such acts should be specified as, if proved, would constitute cruelty. The precise date of the commission of such acts need not be alleged. *Suggatt v. Suggatt*, 28 Law Journ. Rep. P. M. C. 7.

JUDICIAL SEPARATION.—*Cruelty by a husband addicted to intemperance—Custody of children*—20 & 21 V. c. 85, s. 35.—The 35th section of the Divorce Act (20 & 21 V. c. 85) provides that, "in any suit, or other proceeding, for obtaining a judicial separation, or a decree of nullity of marriage, and on any petition for dissolving a marriage, the court may from time to time, before making its final decree, make such interim orders, and may make such provision in the final decree, as it may seem just and proper with respect to the custody, maintenance, and education of the

children, the marriage of whose parents is the subject of such suit or other proceedings, or may, if it shall think fit, direct proper proceedings to be taken for placing such children under the protection of the Court of Chancery." It has been decided that, in making an order as to the custody of the children under sec. 35 of the Divorce Act, the court would exercise a discretionary power exceeding that which is exercised by the courts of law and equity respecting the custody of the infants. *Marsh v. Marsh*, 7 Week. Rep. 129.

PROTECTION OF WIFE'S EARNINGS.—*Affidavit—Statement of desertion*—20 & 21 V. c. 85, s. 21.—The affidavit, in support of an application for an order, under sec. 21 of the 20 & 21 V. c. 85, for the protection of the wife's earnings, should state sufficient facts to satisfy the court of the fact of desertion. Where such an affidavit merely stated that on the 6th of March, 1854, the husband deserted his wife and went to Australia, but did not state in what capacity he went there, whether as a mariner, or emigrant, or how otherwise; whether, since his departure, he had failed to contribute to her support; whether he had neglected to write to her; or, if he had written, what was the nature of the communication: It was held to be insufficient. *Exp. Sewell*, 28 Law Journ. Rep. P. M. C. 8.

BANKRUPTCY AND INSOLVENCY.

ADJUDICATION.—*Bankrupt's own petition—Assets exceeding £150—Realisation.*—We have before stated that a trader petitioning for adjudication against himself must show assets to the amount of £150 (1 L. C. 186, 379; 5 L. C. 201; F. Bk. 217). In the following case it appeared that, traders petitioned under the 20th section of the Bankrupt Act of 1854, 17 & 18 V. c. 119, for adjudication against themselves, and satisfied the commissioner that their available assets exceeded in value the sum of £150. They were accordingly adjudicated bankrupts; but it appearing at the certificate meeting that the assignees had not at that time actually realised that sum in cash out of the estate, the commissioners postponed the grant of the certificate, adjourning the meeting for six months, with liberty for the bankrupts to apply when £150 should be realised: Held, upon appeal, that if it should appear as alleged, that the assets were sufficient to satisfy the requisitions of the statute, but that the realisation was only postponed for the benefit of the creditors, the bankrupts were entitled to an immediate certificate of the first class. *Ex parte Slater*, 28 Law Journ. Rep. Bankruptcy.

ARREST AFTER BAILED.—*Discharge on sureties—Arrest under county court commitments.*—The 38th section of 1 & 2 V. c. 100, enacts that after an insolvent shall have been discharged from custody on sureties, he shall be free from arrest or imprisonment by any creditor whose debt shall be specified in the schedule filed by him preparatory to his hearing: Held, that when an insolvent discharged on sureties till his hearing is arrested at the suit of any creditor, whose debt is specified in the schedule under a county court commitment warrant, for non-payment of such debt, or for

not appearing to process in the county court in respect of such debt, the Insolvent Court will discharge him. *Re Stone*, 32 Law Tim. Rep. 245.

COSTS.—*Action for debt—Reference—Award—Costs taxed after the date of the vesting order.*—The costs of a defeated plaintiff, untaxed at the date of the vesting order, constitute a debt or claim to be inserted in an insolvent's schedule. *Re Allen*, 32 Law Tim. Rep. 302.

DISCHARGE FROM CUSTODY.—*Before choice of assignees—Petitioning creditor having bankrupt in custody for distinct debt.*—It is not the ordinary practice of the court to discharge a bankrupt out of custody under the 12th section of the Bankrupt Act, 1849, before the choice of assignees. The filing of a petition for adjudication of bankruptcy does not amount to a claim or proof on the part of the petitioning creditor so as to entitle different from that upon which the bankruptcy proceeded to be discharged. *Ex parte Steward, re Steward*, 32 Law Tim. Rep. 303.

INSOLVENCY AND PROTECTION.—*Petition under the 1 & 2 V. c. 110, during the pendency of a protection petition.*—The court will not adjudicate under a prison petition filed under the 1 & 2 V. c. 110, during the pendency of proceedings under the protection acts. *Re Corby*, 32 Law Tim. Rep. 302.

INSPECTION.—*Of documents by bankrupt—Time for—Not before advertisement.*—It is contrary to the practice of the court to allow the bankrupt, before the adjudication is advertised, to inspect the proceedings until he has given notice of his intention to dispute the adjudication. *Re an Alleged Bankrupt*, 32 Law Tim. Rep. 303.

OPPOSITION.—*Notice of opposition not entered—Omission of debt from schedule—Correction of amount of debt—Delivery of lease to landlord—Untaxed costs of an action.*—Unless notice of opposition be duly entered according to the rules of the court, no creditor can oppose an insolvent's discharge. Where, however, the object of a creditor at the hearing is to have his debts and claims correctly entered in the schedule, he may hand his accounts to the insolvent's attorney, whose duty is to protect the interests of his clients by correctly entering in his schedule all claims and debts against him. Where any debt is entirely omitted from the schedule the proceedings in insolvency will be no bar to the recovery of that debt subsequently, notwithstanding the creditor's name is duly inserted for another debt. Any debt omitted from the schedule will not be allowed by the court to be inserted in a schedule under any subsequent insolvency. Where a lease is in the possession of an insolvent who is in arrear of rent to his lessor, and it is of no value to creditors, the court will compel the insolvent to give up possession to his landlord before he discharges him; but should a lease be in the hands of a third party, the court cannot interfere. *Quere*, are the costs due by an insolvent as a defeated plaintiff in an action, a debt due until they are taxed. *Re Allen*, 32 Law Tim. Rep. 245.

OPPOSITION.—*Making away with property—Invalid assignment—Costs of opposition where fund obtained.*—Where property has been made away with, unless the value of it be paid into court, the insolvent will have

recorded against him an adverse adjudication on that ground. Where an opposition is successful in bringing a fund into court for creditors, the costs of opposition will be allowed. *Re Good*, 32 Law Tim. Rep. 302.

PARTING WITH PROPERTY.—*Within three months of the date of the petition.*—Held, that the selling of property within three months of the date of a petition to pay out an execution levied to satisfy a judgment for debt, is not such a parting with property as will invalidate a petition under the Protection Acts. *Re Israel*, 32 Law Tim. Rep. 245.

SOLICITOR OF ASSIGNEES.—*Reviewing taxation of solicitor's bill—Revocation of his appointment as solicitor.*—Where the taxing master had disallowed certain charges in the bill of the solicitor appointed by the assignees, incurred in connection with the bankruptcy, and it appeared that before these costs were incurred he had been discharged by the assignees by notice under their hand, the commissioner refused to make an order for the master to review his taxation. *Ex parte Lowne, re Harding*, 32 Law Tim. Rep. 303.

TRADER-DEBTOR SUMMONS.—*Payment of debt before summons returnable—Costs.*—Where a creditor has brought an action against his debtor, and before trial served him with particulars of demand and issued a trader-debtor summons, and has recovered judgment in the action of debt and costs, which were paid before the summons was returnable, the court will not give him the costs of the proceedings in bankruptcy. *Exp. Purdue*, 32 Law Tim. Rep. 246.

TRADER-DEBTOR SUMMONS.—*Affidavit of debt—When to be made—Goods bargained and sold, and work done, &c., omitting "at his request."*—An affidavit of debt filed in support of a trader-debtor summons, but sworn before service of the particulars of demand, is insufficient. Where, under a trader-debtor summons, the claim is in respect of "goods bargained and sold," or for work done, &c., for the defendant, the transaction should be stated in the affidavit of debt to have been "at his request." Where the claim is for "goods bargained and sold," and it appears that they have not been delivered by the plaintiff to the debtor, the Court of Bankruptcy will dismiss a trader-debtor summons in respect to such claim. *Re A Trader-Debtor Summons*, 32 Law Tim. Rep. 79.

TRADER-DEBTOR SUMMONS.—*Admission of debt—Irregularity—Taking affidavit and admission off the file of proceedings.*—The following case, as to the right of the assignor of a debt to make an affidavit and take proceedings towards making the debtor a bankrupt, is one of some importance. It appeared that a creditor, after assigning his debt, filed an affidavit of such debt (under the act 12 & 13 V. c. 106, s. 18), and caused the alleged debtor to be served with a demand of immediate payment, and summoned him before the Court of Bankruptcy to state whether or not he admitted the demand of the creditor. The registrar (before whom the summons was heard) declining to enter into the question whether the debt had been assigned, and requiring the alleged debtor to state whether he admitted the debt or any part thereof, the debtor filed an admission as to part of the debt, and a deposition that he had a good answer to the residue

of the creditor's demand: Held, upon appeal, that the creditor was not justified in making an affidavit of debt after assignment without the concurrence of the assignee, that the alleged debtor was entitled to have his admission and deposition taken off the file. *Semble*, that a proceeding by summons of a trader-debtor, if taken by the assignor and assignee of the debt jointly, would not be objectionable. *In re Taylor*, 28 Law Journ. Rep. Bank. 9.

COUNTY COURTS.

COSTS.—*Meaning of the word "dwells" in 9 & 10 V. c. 95, s. 128.*—A gaol in which a person is confined is not a dwelling within that section. The plaintiff, being on a visit to her sister, personated her, and was taken upon a *ca. sa.* in her stead. She was taken to Maidstone Gaol, which was more than thirty miles from the defendant's, and remained there up to the commencement of the action. Upon her discharge from custody, she returned to her sister's. There was nothing to show how long she had been at her sister's: Held, first, that her residence in the gaol, being temporary and compulsory, she did not dwell there within the meaning of the act; secondly, that the court, although it may review the discretion of the judge who tried the cause, as to whether costs should be allowed to the plaintiff, as having a "sufficient reason" within 15 & 16 V. c. 54, s. 4, for bringing the action in a superior court, will not, in general, overrule such discretion. *Dunstan v. Paterson*, 32 Law Tim. Rep. 61.

CRIMINAL LAW.

APPEAL.—*Case stated by justices—Costs—Conviction quashed.*—20 & 21 V. c. 43.—Sec. 6 of 20 & 21 V. c. 43, provides that the justices are not to be liable to any costs in respect or by reason of an appeal against their determination: but the costs are payable by the party prosecuting. Thus, upon an appeal under 20 & 21 V. c. 43, against a conviction under a local turnpike act, for illegally taking toll, the conviction was quashed, and it was held, that the party prosecuting must pay the costs. *Venables v. Hardman*, 28 Law Journ. Rep. M. C. 33.

APPEAL.—20 & 21 V. c. 43.—*Appeal against a decision of justices—Costs for or against the Crown.*—The Crown is not bound by a statute unless expressly named. By the 20 & 21 V. c. 43, justices of the peace are empowered to reserve a case for the opinion of a superior court. In sec. 4, the case of an application for an appeal by the Attorney-General is expressly mentioned, so that the Legislature must be considered as having contemplated an appeal in cases where the Crown is a party. Sec. 6 gives power to the Queen's Bench to hear the appeal, and reverse, affirm, or amend the decision below, and empowers that court to make such order as to costs as it may think fit. It has been decided that the Crown, in appeal under the 20 & 21 V. c. 43, may have to pay or receive costs according to the order of the court. In an appeal against a conviction upon the information of an officer of Excise, the court has power to give the costs of

the appeal to the successful respondent, although prosecuting for the Queen by order of the Commissioners of Inland Revenue. *Moore v. Smith*, 7 Week. Rep. 206.

FALSE PRETENCES.—7 & 8 G. 4, c. 29, s. 53—*Chattels—Dog.*—A dog is not included in the term “chattels” in the 7 & 8 G. 4, c. 29, s. 53, and is not the subject of the misdemeanor of false pretences. Such things only are included as were the subject of larceny at common law. *Lord Campbell v. Robinson*, 32 Law Tim. Rep. 302.

HIGHWAY ACT.—*Encroachment—Jurisdiction of justices*—20 & 21 V. c. 43—*Recognisances—Time for entering into.*—Secs. 2 and 3 of the 20 & 21 V. c. 43, give to either party dissatisfied with the decision of justices in point of law, a right to apply in writing within three days to the justices to state and sign a case, and a recognisance is to be entered into. By sec. 69 of the Highway Act (5 & 6 W. 4, c. 50, “If any person shall encroach by making or causing to be made any building, hedge, ditch, or other fence, on any carriage-way or cart-way, within the distance of fifteen feet from the centre thereof,” he shall forfeit not exceeding 40s. Sec. 63 describes the highway as being that portion of ground which has been maintained by the surveyor as highway, and repaired by him. It has been decided, that under the 20 & 21 V. c. 43, ss. 2, 3, the appellant has the whole of the three days mentioned in sec. 2, in which to enter into his recognisance, and he is not bound to enter into it at the time of his making his application for a case. Also that the power of justices to convict summarily under sec. 69 of the 5 & 6 W. 4, c. 50 (the General Highway Act), for an encroachment, is confined to encroachment upon that part of the highway which has been ordinarily used and repaired by the surveyor as such. Where, therefore, the appellant was possessed of a piece of land which formerly had formed a portion of the highway, but had not been used as such for many years, and he had built a cottage upon it: Held, that the justices had no jurisdiction to convict under the above section. *Chapman v. Robinson*, 32 Law Tim. Rep. 89.

PAUPERS.—*Settlements—Parish apprentice* [F. Bk. 93, 103; Law Dict. p. 17]—*Order of justices—Presumption—Secondary evidence*—56 Geo. 3, c. 139.—Upon a question whether G. W. had acquired a settlement by service, as a parish apprentice, to P., it was proved that in 1824 he and his father were taken by the overseers before the justices; that P. and the overseers were there—that papers were drawn up—and the justices asked the father whether he had any objection to his son being bound apprentice to P.; that G. W. went the next day to P., and that he remained with him two or three years. It also appeared from the register-book that one G. P. W. had, in 1824, been bound apprentice to P. The sessions from these facts inferred that G. W. had been duly bound a parish apprentice to P.: Held, that they were right in drawing such an inference. *The Queen v. The Inhabitants of Broadhempston*, 28 Law Journ. Rep. M. C. 18.

POOR.—*Settlement*—9 & 10 V. c. 66, s. 1—*Irremovability of widow after husband's death.*—By the 9 & 10 V. c. 66, s. 1, it is provided that whilst the husband cannot, his wife and children shall be irremovable, in order that

families may not be separated ; but this does not apply after the husband is dead. Therefore, it has been decided that a widow, not having resided five years in a parish at her husband's death, is not irremovable, although her husband had resided continuously in the parish for more than twenty years previously, and up to the date of his death. *Reg. v. Cudham*, 7 Week. Rep. 161.

TRUCK ACT.—1 & 2 W. 4, c. 37, s. 25—*Artificer employed in or about a trade*.—A person employed in loading boats with iron at a private canal, close to iron works, is an artificer in making iron within the Truck Act, 1 & 2 W. 4, c. 37. *Millard v. Kelly*, 7 W. R. 12.

Moot Points.

No. 24.—Priority of Equitable Mortgage over Legal Mortgage.

A., being possessed of certain freeholds, makes an equitable mortgage of them to a bank, by a deposit of all the title deeds, and afterwards makes a legal mortgage of them to a second bank, at the time stating that the deeds were in the possession of the first bank. In this case, which takes the priority? Perhaps some of your numerous correspondents will be kind enough to refer me to the latest case on the subject. G. M—nn.

No. 25.—Sale—Recovering back Deposit.

On a sale by auction, the purchaser paid a deposit to the auctioneer. The vendor has made out what he considers to be a good title, but the purchaser requires further proof of it, which the vendor refuses to furnish. The purchaser has not rescinded the contract, but he has sued the vendor to recover the deposit and his costs incurred in investigating the title. The auctioneer still holds the deposit money, and indeed, refuses to pay it to either party until the purchase is completed or the contract rescinded. Can the purchaser sue the vendor for the deposit, or should he not have brought his action for it against the auctioneer? H. W.

No. 26.—Annuity charged on Several Estates.

An annuity, with powers of distress, &c., was charged on estates A., B., and C. It being proposed to sell B. and C., the owner of these estates procured the annuitant to execute a deed, assigning the annuity to Z., in trust to forbear from demanding and enforcing the payment of the annuity out of B. and C., and subject thereto in trust for the annuitant. A purchaser of B. and C. requires the annuitant and Z., to join in his conveyance, inasmuch as the annuity is not released, nor are the lands B. and C. discharged therefrom at law; neither was the estate A. exclusively charged with the annuity. Is the purchaser right? There were no conditions, precluding any objection. Will any of your correspondents be good

enough to state what conditions would have been proper, if it is thought that any are required ?

H. W.

No. 27.—*Vendor and Purchaser—Compensation.*

A vendor files his bill for specific performance of a contract for sale of lands. The purchaser objects that no title is shown to a portion of the land, and before bill filed he asked for compensation in respect of the deficiency, which was refused by the vendor. Suppose the purchaser's objection to be sustained on the hearing, and that thereupon the plaintiff should ask to have his bill dismissed with costs, can the purchaser insist on a decree being made for specific performance with compensation. Has there ever been a case where compensation has been given to a purchaser on a vendor's bill for specific performance, when the vendor was not willing to give compensation. If so, I should be glad to be referred to it.

J. LEE.

No. 27a.—*Articles of Partnership—Drawings on Account.*

By articles of partnership it is provided that each partner may draw out sums equal in each year to £600, accounting for the same on the division of profits, nothing being provided for the case of there being no profits. The capital of each partner consisted of £1,500. One partner drew out the first year a sum of £600; there were no profits, the concern being a losing one. The same partner is anxious in the second year to draw out another sum of £600, notwithstanding it is evident the business is not making any profits nor is likely to do so for some years. Can the other partners prevent the co-partner from drawing out to the extent of his capital at least; and is such partner limited to the amount of his own capital, if the other partners do not choose to withdraw their respective capitals ?

J. LEE.

No. 28.—*Sale Tithe Free.*

A plot of land is sold "tithe free," and the vendor refuses to furnish any other evidence than a declaration by the owner that to the best of his knowledge no tithe has ever been paid for the land. Can the purchaser be compelled to take the title upon such a declaration, or what other proofs may he require ?

M. J. N.

No. 29.—*Devise—Death of Devisee before Testator.*

A., by his will made in 1843, devised property, partly freehold and partly copyhold, to a trustee, his heirs and assigns, upon trust for such persons, and for such estates as the testator's niece B., a feme covert, should, by deed or will, appoint, and, in the meantime, upon trust to let the same and to pay the rents to B. during her life for her separate use, and from and after her death, and in default of any such appointment, then upon trust for and to the use of the right heirs of B. for ever. B. died in the lifetime of the testator. Does her heir, on the death of the testator, take any estate in either the freehold or copyhold lands ?

GEO. R. ROGERSON, 4, Chapel-street, Liverpool.

No. 30.—*Solicitor—Executor—Costs as between Solicitor and Client.*

The mooter will be glad of an opinion upon the following case:—viz., whether an executor, being a solicitor, and acting as such in the administration of the estate, by bringing or defending actions or otherwise—is entitled to an allowance for costs in respect of his professional labour, beyond costs out of pocket; and, if so, whether as between solicitor and client.

JOHN W. S. LAVENDER.

No. 31.—*Policy—Assignment—Form.*

Is it necessary, in the assignment of a policy effected with a Scotch insurance company, that such assignment should be in the Scotch form, or will one in the English form be sufficient? Reference to an authority will oblige.

JOHN W. S. LAVENDER.

No. 32.—*Surrender of Lease—Underleases.*

Suppose a lessee desires to renew his lease before the end of the term, and for that purpose to surrender the existing lease. How would this proposition be affected by the fact of his having granted several underleases which are still unexpired, and how should the intention be effectuated?

E. H.

No. 33.—*Agreement to Divide future Property among Family.*

A., a spinster, seised of real estate, was of weak intellect, and incapable of making a will. B., her eldest brother, was her heir presumptive, having a large family. He was desirous that his sister's property, in case of his death in her lifetime, should be equally divided amongst his children. To effect this, a document under hand only was prepared, and signed by B. and his children, all of whom were of age, whereby he expressed a wish and direction, and they agreed that the property should, in case of B.'s death in A.'s lifetime, go to B.'s widow for life, and after her decease be sold by certain trustees therein named, and the proceeds divided equally amongst the children of B., share and share alike. B. died in the lifetime of A., and on the death of A., the property has devolved upon B.'s eldest son, who was party to the agreement, and who declines to fulfil it, contending that it was voluntary and void for want of consideration. Can the agreement be enforced in equity as a reasonable family settlement or otherwise.

ALFRED LAMB.

No. 34.—*Stoppage in Transitu—Vendor's power of—Time.*

Is a vendor of goods at liberty absolutely to rescind the contract on stoppage in transitu, or can he merely hold them until paid for by the vendee or assignees, and then deliver them up, and if the latter, how long must he hold them? See judgment per Parke, B., in *Wentworth v. Outhwaite* (10 M. & W., pp. 451, 452).

JOHN W. S. LAVENDER.

No. 35.—*Devise—"Dying without issue."*

A., by his will dated in 1817, gave and bequeathed as follows:—"I give and bequeath to B. all and every my messuages, lands, tenements, here-

ditaments, and all and singular my real estate, whether freehold or otherwise, and in possession, reversion, remainder, or expectancy; and also all my personal estate and effects whatsoever and wheresoever, unto the said B., now living in the township of S——y, and for and during the term of his natural life, and after his decease, I give and bequeath to D. the aforesaid messuages, lands, tenements, hereditaments, and real estate; and in case of the decease of D., son of B., *dying without issue*, the surviving heir of B., I give the aforesaid premises to E., F., and C., to be divided equally amongst them, share and share alike, as tenants in common. D. never made a will, and is now dead, leaving lawful issue him surviving. What estate does D. take in the property? and can he make a good title to a purchase.

LEX.

No. 36.—*Accidental breaking of Plate Glass.*

There is a prevailing notion that if a plate glass window be broken by accident, the person breaking is only liable to pay the cost of *common* glass. Has this notion any foundation in law, if so, does any act bear upon the point, or is it the result of decided cases? Please cite authorities. I have met with the above question (which has been mooted either in the *LAW CHRONICLE* or elsewhere), but am unable to find any answer thereto.

W. GURNEY.

No. 37.—*Arson to Hemp or Flax Stack.*

By the 7 W. 4, and 1 V. c. 89, s. 10, it is enacted that "whosoever shall unlawfully and maliciously set fire to any stack of corn, grain, pulse, tares, straw," &c., shall be subject to the penalty therein mentioned. Quære, will an indictment lie for maliciously setting fire to a stack of hemp or flax?

W. GURNEY.

No. 38.—*Appointment—Fraud upon the Power.*

By a marriage settlement, certain real estates were conveyed to trustees in trust for A. and her husband for life, with remainder to such of the children of the marriage as A. should by deed or will appoint. A few months ago A. appointed one of the settled estates to her eldest son, who was then a minor, but who has since attained his majority. The son is now desirous, at the instigation of his father, to raise a sum of money by mortgaging his estate, which is partly to be applied for his own education and advancement, and partly for the education and advancement of his younger brother. Would this make void the appointment, on the ground of its being made for the benefit of the appointor or her husband, or would the benefit which they would receive be deemed only that which they had a right to by virtue of their life interests?

J. D. G.

No. 39.—*Brick Burning—Agreement.*

In March, 1858, A. B. agreed (by letter) to permit Messrs. C. D. and Co. to burn whatever bricks they might require that season on payment of 2s. 6d. per thousand for royalty, rent of yard, and use of plant, and agreed to take to their stock in case of his letting the yard to any other

person. C. D. and Co., during the season, burnt several thousands of bricks, and sold some, but there are a large quantity remaining. A. B. now wishes to use the yard himself for agricultural purposes, and has commenced to dig it up, but says that he will not take the remaining bricks because he did not let the yard to any other person, but occupied it himself. What steps ought C. D. and Co. to take under the circumstances?

JOHN BRYAN.

No. 40.—*Works on Legislation.*

Can any of your readers supply a list of works upon the *Principles of Legislation*? and thereby greatly oblige

VERIDICUS.

Answers to Moot Points.

No. 14.—*Legacy to Married Woman—Husband's Rights* (ante, p. 71).

If a testator, either knowingly or through inadvertence, gives away the property of another, to whom he gives some estates or interest by his will, such person is not allowed to retain his own property, and to take the benefit intended for him under the will of the testator. But he must elect whether he will retain his own property, or take that which the testator has given to him; for he cannot have both. This is what I understand to be the doctrine of election referred to in the editor's note; and, therefore, I cannot see how it applies to the present case.

It does not appear that the testator has made any reference whatever in his will to other property but his own; neither has he used any expression therein which might be construed as an attempt by him to dispose of the reversionary legacy to which his wife is entitled after the death of her mother.

He merely gives to his wife a pecuniary legacy of about the same amount—*assuming*, the mooter says, that he was entitled to dispose of that given to her by her father.

This he *should have done* either expressly or by implication; as by directing his gift to the wife, to be satisfied out of the money to be received in her right under her father's will; but he seems to have done neither, and, therefore, I don't think he can be said to have disposed of the property of another, so as to make the doctrine of election applicable.

We should, however, be glad to hear the opinion of the editor on the subject.

W. M. SHERRING.

No. 16.—*Minerals* (ante, p. 72).

As it is especially stated in the quære that the minerals were reserved to the lord by the Inclosure Act, I think there can be no doubt he is entitled to them, but in working the mines he must leave sufficient support for the surface in its natural state (*Vide* L. C. vol. 2, p. 164; *Harris v. Ryding*, 5 M. & W. 66; *Humphries v. Brugden*, 12 Q. B. 739).

M. L. J.

No. 16.—*Minerals—Inclosure (ante, p. 72).*

In my opinion the allottees would become entitled, subject to the right of the lord, to the minerals beneath or under their respective allotments (See *Micklethwait v. Winter*, 20 L. J. Ex. 313). FRANCIS HARTLEY.

No. 18.—*Trust to Sell after Death of Tenant for Life (ante p. 72).*

Under the circumstances stated in this moot point to have taken place, I am of opinion that a purchaser would be perfectly safe in accepting the title from the heir-at-law, the executor, and the other parties interested.

J. G. B. EDWIN.

No. 21.—*Trustees—Misappropriation—Liability (ante, p. 73).*

I am inclined to think that A. is not liable for the misappropriation by B. of his share. It was first clearly decided, in the principal case of *Townley v. Sherborne*, so far back as the reign of Charles the First, by Lord Keeper Coventry, after much deliberation, that a trustee should not be liable for the acts or defaults of his co-trustee (see *Leigh v. Barry*, 3 Atk. 584, also *Tudor's Leading Cases in Equity*, vol. 2, p. 649, and *Lewin on Trusts*, p. 241).

T. D. G.

No. 21.—*Trustees—Misappropriation—Liability (ante p. 73).*

Both trustees are clearly liable for the acts of one. The arrangement they have made is for their mutual accommodation, and cannot alter their liability (*Story's Equitable Jurisprudence*, ss. 1274, 1284).

TEMPLARIUS

No. 21.—*Trustees—Misappropriation—Liability (ante, p. 73).*

I consider both trustees would clearly be liable on the default of either; because the party not acting was in default for giving the other the power, and exposing him to the temptation to commit a breach of trust, instead of exercising that control over the property which it was his duty to exercise for the protection and due management thereof (*Smith's Manual of Equity*, 167, referring to *Story's Com.*, 1274, 1284, and 2 *Spence*, 920, *et seq.*).

S. J. E.

No. 22.—*Master and Servant—Written Contract (ante, p. 73).*

In *Dobson v. Co.* (1 H. & N. 81), it was decided, that a contract for service for more than a year, but subject to determination within the year on a given event, is within sec. 4 of the Statute of Frauds, and must therefore be in writing (*Princ. Com. Law*, 169).

S. J. E.

No. 23.—*Power to Sell and give Receipts (ante p. 73).*

A. having devised his real and residuary personal estate to B., his heirs, executors, and administrators, upon trust to sell the same, and out of the sale to pay A.'s debts, and B. (the trustee) having died in the testator's lifetime, the question is, can A.'s administrator and his heir-at-law sell the property, and make out a good title to a purchaser?

The real estate being devised upon trust for sale to pay debts, would, I

think, enable the administrator *alone* effectually to sell the property, but if, in addition, the concurrence of the testator's heir-at-law can be procured, the title would be more satisfactory, and such as a willing purchaser would no doubt accept (see Dart's Vend. and Pur. 2nd ed. 324).

True it is that, in this case, the estate is actually devised to a person named to carry out the trust, but the fact of his having died in the testator's lifetime does not vitiate the trust for the payment of debts. I think, therefore, the trust must be construed as though there had been no person named to carry it out, and would so devolve upon the executor or administrator; indeed what more could the Court itself do than direct the administrator, or some one else, to execute the trust. I have assumed there is no power to appoint new trustees in the will, in which case, of course, my opinion would be different.

J. G. B. EDWIN.

No. 23.—*Power to Sell and give Receipts* (ante, p. 73).

The devise to the trustee having lapsed by his death in the lifetime of the testator, the legal estate in fee simple, subject to the trust for sale created by the will of the latter, descended upon his heir-at-law, who, in my opinion, is not only able, but is bound to carry out the trusts of the will; and I am inclined to think, that as a trust for sale implies a power to give receipts, the heir-at-law alone can give a good discharge for the purchase money, and more especially as the first trust is for payment of debts.

TEMPLARIUS.

No. 24.—*Priority of Equitable Mortgage over Legal Mortgage* (ante, p. 99).

As it was stated at the time of the mortgage to the second bank that all the title-deeds were in the possession of the first bank, I think the latter would take the priority; for if the second bank neglected to inquire for what purpose the deeds were held, they did it at their own risk, and would place themselves in the position of a purchaser with notice. (*Vide Coote's Mortgages*, 2nd ed, 227: *Hiern v. Mills*, 18 Ves. 114.)

M. L. J.

No. 24.—*Priority of Equitable over Legal Mortgage* (ante, p. 99)

I think the legal mortgagee would be postponed.

Fraud or wilful negligence will not be imputed to a mortgagee who has made *bonâ fide* an inquiry for the title-deeds, and a reasonable excuse has been given for their non-delivery to him: *Secus*, if he has not made inquiry (*Hewett v. Loosemore*, 9 Hare, 449; 21 L. J. R. C. 69).

In *Whitbread v. Jordan* (reported 4 L. J. R. Ex., in Equity, p. 38), Alderson, B., said: "If a party, having knowledge of a deposit of title-deeds, omitted to inquire into the circumstances, the court might reasonably infer that he did so in order to avoid express notice.

And in *Plumb v. Fluit* (2 Anst. 432) it was laid down, that where a party had such knowledge as would lead an honest man to make further inquiry, and he neglected to do so, he must be taken to have had notice of those facts, which, by using ordinary diligence, he might have ascertained, and gross negligence in omitting to make such inquiry would, at all events, suffice to fix him with notice.

S. J. E.

No. 24.—*Priority of Equitable Mortgage over Legal Mortgage* (*ante*, p. 99).

I think that the legal mortgagee will have priority over the equitable mortgagee, unless he has been guilty of fraud or gross or wilful negligence in applying for the title deeds, and the court will not impute such fraud or neglect to him if there has been a *bonâ fide* inquiry after such deeds (See *Hewitt v. Loosemore*, 21 Law Journ. Rep., N. S., Ch. 69; and 9 Hare, 449).

JAMES WALKER (Leek).

No. 24.—*Priority of Equitable Mortgage over Legal Mortgage*
(*ante*, p. 99).

Assuming that the equitable mortgagees can prove that the legal mortgagees had notice of the loan and deposit of deeds by A., or that from other circumstances they must have supposed some other person had a prior claim on the estate, I think that a court of equity would decree in favour of the equitable mortgagees, and on a bill being filed by them, direct a sale (*Pain v. Smith*, 2 M. & K. 417). The deeds not being forthcoming at the time the legal mortgagees made their advance to A. was in itself, I consider, a constructive notice of a prior claim, and they were bound to make further inquiries. In the case of *Whitbred v. Jordan* (4 L. J. N. S. Ex. Eq. 38; and 1 Y. & C. 803), it was decided that a purchaser for valuable consideration will be fixed with notice of incumbrances if he omits to use due diligence in his inquiries previous to purchase. The principle of that decision, I consider, applies to the present case, so far as the notice of the equitable mortgagees' prior claim is concerned.

Also as to priority, see the case of *Whitworth v. Gaugain* (13 Law Journ. Rep. N. S. Ch. 288). In that case, D. deposited his title deeds with W. & Co. (bankers) as a security. Subsequently to the date of the deposit B. recovered judgment against D., and recovered possession of the estates by writ of elegit. Upon a bill by W. & Co., praying relief as equitable mortgagees, it was held that they were entitled to payment of their debt in preference and priority to the subsequent elegit creditors.

There may be other cases more in point than the last cited, but I have not just now time to look them up.

F. A. C.

No. 24.—*Priority of Equitable Mortgage over Legal Mortgage*
(*ante*, p. 99).

I think the first bank are entitled to the priority, though the purpose for which the deeds were deposited with the first bank does not appear to have been stated to the second. The fact of their having been deposited, of which they had notice, would be sufficient to put them upon inquiry, and more especially as bankers are constantly in the habit of advancing money upon a deposit of title deeds.

TEMPLARIUS.

No. 25.—*Sale—Recovering back Deposit* (*ante*, p. 99).

A deposit is considered as a payment in part of the purchase money, and not as a mere pledge (*Pordage v. Cole*, 1 Saund. 319). In *Edwards v. Hodding* (5 Taunt. 815; 1 Marsh. 377), where the auctioneer was also the

attorney of the seller, and paid over the money to him after he knew that objections to the title had been raised, an action against him for the deposit was sustained; but the judges cautiously abstained from pointing out the duty of an auctioneer in any other case. However, in a later case (*Gray v. Guttridge*, 1 Mann. & Ryl. 614), where the auctioneer had paid over the deposit to the vendor without any notice from the purchaser not to do so, and before any defect of title was discovered, it was held that the purchaser (the title being defective) might recover the deposit from the auctioneer—for the payment of the deposit depends upon the want of a good title being made out. If a good title is not made out, the purchaser becomes entitled to his deposit, and an action may be maintained for it without giving notice of the default to the auctioneer (*Duncan v. Cafe*, 2 Mees. & Wels. 244). I therefore think that the purchaser should have brought an action for his deposit against the auctioneer.

If both parties claim the deposit the auctioneer may file a bill of interpleader and pray for an injunction, which will be granted on payment into court of the deposit (*Farebrother v. Pratten*, 5 Price, 308).

GEORGE R. ROGERSON, 4, Chapel-street, Liverpool.

No. 2.—*Sale—Recovering back Deposit (ante, p. 99).*

Whilst the contract for sale remains in force, I do not think the purchaser can sue either the vendor or the auctioneer for the deposit, with any prospect of success. The auctioneer is a trustee for both parties, and is quite justified in declining to pay over the deposit to either, and if in action were brought against him, he might compel an interpleader.

TEMPLARIUS.

No. 25.—*Sale—Recovering back Deposit when Paid to Auctioneer (ante, p. 99).*

I do not think the purchaser can recover the deposit in an action against the vendor; and certainly not under the common count of money had and received by him for the purchaser's use (*Johnson v. Roberts* 24 L. T. 254). But I see nothing to prevent the purchaser from afterwards suing the auctioneer, who, if both parties claim, may for his protection file a bill of interpleader (*Dart* 114), as he cannot safely pay the deposit to either party without the other's consent (*Burrough v. Skinner*, 5 Burr.). At the same time, the purchaser might first have sued the auctioneer for the deposit, and then the vendor for interest and expenses (*Farquhar v. Farley*, 7 Taunt. 592; 1 Moo. 322). He could not recover interest from the auctioneer (*Harrison v. Hoggart*, 1 Barn. & Adol. 577).

I presume that in the case put, the purchaser affirms the contract, and sues for damages for its non-performance, when, if he can prove a contract binding on the vendor, he may, under the special counts, recover expenses of agreement, comparing abstract with deeds, investigating and endeavouring to clear up the title and interest on the deposit (*Dart*, 612; *Hanslip v. Padwick*, 5 Ex. 615; 19 L. J. Ex. 372).

S. J. E.

No. 26.—*Annuity Charged on Several Estates (ante p. 99)*

Inasmuch as a release of a portion of the lands charged with the annuity would operate as a release of the whole, I consider, if the annuity was created by deed (or even, with some qualification, by will), there should, on a sale, be a condition that the purchaser should be satisfied with a covenant by the annuitant to refrain from making any claim or distress upon the land conveyed. This covenant, I think, should either be included in the purchaser's conveyance, or be by a separate deed grounded on some consideration, as a payment of a sum of money, or a charge on other lands. Although such a covenant nor the deed referred to in the question would, perhaps, operate as a release in law, yet I apprehend it would be enforced in equity, provided no fraud or misrepresentation was resorted to in obtaining it; and, therefore, I think the court would compel the purchaser to accept the title on such a covenant or deed referred to by the mooter being executed by the annuitant. I may mention, that, if the estates were devised in trust for sale, or to the vendor absolutely, subject to the payment of the testator's debts, the case of *Page v. Adam* (4 Beav. 269) decides that the concurrence of the annuitant is not necessary to enable the vendor to make a good title.

F. A. C.

No. 26.—*Annuity charged, &c. (ante, p. 99).*

I think the purchaser is quite right in requiring the concurrence of the annuitant and his trustee in the conveyance to him of the estates which are charged with the payment of the annuity.

I also think it would have been far more preferable to have sold the estates subject to the payment of the annuity. Suppose the annuitant to be an ordinary tradesman, or in doubtful circumstances, a question might possibly arise as to the validity of his voluntary extinguishment of the annuity, so far as the estates B. and C. are involved, especially if the estate A. is inadequate to the payment of it.

W. M. SHERRING.

No. 26.—*Annuity Charged on Several Estates (ante, p. 99).*

The trusts of the assignment to Z. seem defective. Should there not have been an express trust to raise the annuity out of A.? But, even if complete, I do not think a purchaser would, in the absence of conditions, be bound to accept such an arrangement.

Of course the annuitant would not release B. and C., as that would operate to release A. also (see 2 Roll. Abr. 414; and Williams on Real Property, 273, 3rd edit.).

The method sometimes adopted in such cases is for the annuitant to enter into a covenant not to enter or distrain on the lands desired to be discharged, though it might be objected such a covenant would operate as a release, as a covenant *not to sue* has been held to be a release (*Deux v. Jefferies*, Cro. Eliz. 352); and this seems to have been the construction put upon such a covenant in *Butler v. Brounings* (Noy, 5), although Alderson, J., entertained a different opinion.

The best plan, however, would seem to be for the annuitant to release the *whole* land in consideration of the grant of a *fresh annuity* out of the *unsold* portion, by an indenture of even date. But it is evident the annuitant could not be advised to adopt this plan if any incumbrances have been created on the lands since the original grant of the annuity.

I think that a condition fairly setting out the arrangement made as to the annuity in the case, stated, and stipulating that the purchaser should be satisfied therewith, would have precluded him from requiring the concurrence of the annuitant and Z., at least, except at his own expense (see *Parken and Stewart's Bythewood*, published by Phenev and Sweet, Chancery-lane, Fleet-street, 1828, 1834, p. 170, vol. 7, from which the above is partly extracted).

S. J. E.

No. 26.—*Annuity Charged on Several Estates* (ante, p. 99).

The annuitant cannot be compelled to release the estates B. and C. from the rentcharge to which, jointly with the estate A., they are subject. The effect of such release would be to cause the extinguishment of the rentcharge, on the ground that it is entire, and issues out of every part of the property on which it is charged (Co. Litt. 148 a.; Cru. Dig. tit. 28, c. 3, s. 16). A special condition ought to have been inserted in the contract, stipulating that the purchaser should be satisfied with the security afforded by the deed into which the annuitant has entered, and expressly negating any right to call for a release. For want of such a stipulation, the purchaser cannot be compelled to complete his contract; but should he think proper to do so, he may, perhaps, require an indemnity from the vendor, or compensation.

TEMPLARIUS.

No. 27.—*Vendor and Purchaser—Compensation* (ante p. 100).

Assuming that the portion of the property to which there is no objection can be held by the purchaser without material deterioration or inconvenience, I am of opinion that, if the purchaser's objection to the other portion is sustained on the hearing, that the Court will decree specific performance *pro tanto*, with compensation, and will visit the vendor with the costs (Sug. Vend. and Pur. 9th ed. 291).

J. G. B. EDWIN.

No. 27.—*Vendor and Purchaser—Compensation* (ante, p. 100).

I think that, instead of deciding at the hearing upon the validity of the purchaser's objection, the court would refer the matter into chambers for inquiry, and supposing that on such inquiry the purchaser substantiated his objection, I am of opinion that on the cause coming on again for hearing, and especially as one of the leading aims of the court is to prevent multiplicity of suits, it would decree, if the purchaser desired it, specific performance, so far as the vendor was able to make a good title, with a proportionate abatement from the purchase money. The effect of dismissing the vendor's bill would be to place the parties *in statu quo*, and not to rescind the contract. The purchaser would therefore be entitled, immediately

after such dismissal, to file a bill for specific performance *pro tanto*, which it is quite clear the court would decree, and would compel the vendor to give compensation, whether he were willing to do so or not (Story's Eq. Jur. s. 779).

TEMPLARIUS.

No. 27.—*Vendor and Purchaser—Compensation (ante, p. 99).*

I am not aware of any case where compensation has been given to a purchaser on a vendor's bill for specific performance when the vendor was not willing to give compensation.

If the purchaser wishes to have the estate, he may file a bill for specific performance of the contract. On the other hand, if he do not care to have the estate, he may bring an action at law to recover compensation by way of damages for the non-fulfilment of the contract, affirming the contract; if he rescind the contract, there is no remedy except for any deposit (see Dart's Vend. and Purch. 609, 615, 3rd ed.) JAMES WALKER (Leek).

No. 28.—*Sale Tithe Free (ante, p. 100).*

There does not appear to have been any stipulation providing that the declaration of the vendor as to the land being tithe free should be sufficient evidence thereof without further proof. I think, however, if the property is of small amount in value (and so it would appear), and the vendor's declaration as to no tithe being payable goes to the period of fifteen or twenty years, that a willing purchaser should accept it as satisfactory without further proof.

J. G. B. EDWIN.

No. 28.—*Sale Tithe Free (ante, p. 100).*

Whether the purchaser can be compelled to accept the title upon such a declaration as referred to will, I consider, mainly depend on the conditions under which he purchased. If there was no restrictive condition in that respect, I think the vendor must satisfactorily prove the non-liability to tithe, either by merger or non-payment of tithe for upwards of sixty years (see 2 & 3 W. 4, c. 100). Although the 3 & 4 W. 4, c. 27, enacts that no land (which includes tithes) shall be recovered but within twenty years after the right accrued, it has been held that the enactment is confined to cases of adverse claims of an estate in the tithes, and that a tithe owner is not thereby barred from recovering tithes from an occupier, although none has been paid for upwards of twenty years (Dean and Chapter of Ely v. Cash, 15 Mee. & W. 617).

F. A. C.

No. 28.—*Sale Tithe Free (ante, p. 100).*

In the case of *Ker v. Cloberry* (26 Mar. 1814, M.S.), where the estate was sold before the master, and the particulars stated that "the whole of the above lands are only subject to a modus for tithe hay of £2 per annum," Lord Eldon was of opinion that a purchaser of an estate stated to be tithe free, or subject to a modus, could not be compelled to take it with a compensation if the estate is not tithe free. I therefore think the

purchaser could not be compelled to take the title upon such a declaration as the one stated in the moot question.

GEORGE R. ROGERSON, 4, Chapel-street, Liverpool.

No. 28.—*Sale Tithe Free (ante, p. 100).*

I am of opinion that the purchaser is entitled to call for evidence, that the land has been enjoyed free from tithe for sixty years (Dart 240; 2 & 3 Wm. 4, c. 100. And, in default of satisfactory evidence, the vendor's suit for specific performance, even with an abatement, could be successfully resisted (Dart 691).

S. J. E.

No. 29.—*Devise—Death of Devisee before Testator (ante, p. 100).*

If a devisee, not being a child or other issue of the testator, dies in his lifetime, the devise to him lapses, unless a contrary intention appear by the will (1 V. c. 26); but the devise of an ulterior interest in the same estate does not lapse because of the death of the life tenant before the testator.

But it will be asked, what is the effect of the rule in Shelly's Case? Well, I think it does not touch the present question at all. It has effect only when a man takes an estate of freehold, and by the same gift or conveyance, an estate is limited either mediately or immediately to his heirs or the heirs of his body (1 Rep. 104 a.; 1 Hay's Conv. 842). Now, in the case before us, B took nothing; she having died in the testator's lifetime, and, therefore, it seems to me an essential ingredient of the rule is wanting—namely, the actual possession of the ancestor. If she had survived the testator, and died without exercising her power of appointment, it might have been contended, perhaps, with effect. But her heir-at-law must take, if at all, by descent, and not by purchase.

Under the circumstances, I think the heir-at-law of B. is clearly entitled to the freehold and copyhold estates of the testator under his will.

W. M. SHERRING.

No. 29.—*Devise—Death of Devisee before Testator (ante, p. 100).*

Inasmuch as the words "Right heirs of B." are words of limitation, and only an enlargement of B.'s life estate, if B. die in the lifetime of the testator, the devise will lapse and devolve respectively on the heir-at-law and customary heir.

W. W. A.

No. 32.—*Surrender of Lease—Underleases (ante, p. 101).*

Formerly a renewal could not be obtained by a lessee without a surrender of all the underleases derived out of the original lease. By 4 G. 2, c. 28, this was altered, and now the original lease may be renewed in the ordinary way, without being affected by the underleases.

W. W. A.

No. 32.—*Surrender of Lease—Underleases (ante, p. 101).*

The object of the lessee can be attained by his simply executing a surrender of the existing lease without the concurrence of the sub-lessees,

whose leases, notwithstanding such surrender, will be as binding as if no such surrender had taken place. The'mooter is referred to 4 G. 2, c. 28, s. 6.

W. M. SHERRING.

No. 19—(p. 78).—For "administration" read "admission."

Vendors and Purchasers.

CONDITIONS OF SALE.—*Lease in excess of prior term—Misdescription—Distress.*—Where a lessee makes a sub-lease for several years exceeding his term, and a sale of such sub-lease for the whole term in actual point of time takes place under the direction of the Court of Chancery; it is not a misdescription to state that such lease (which is sold as a ground rent) is amply secured on certain premises described, where the leases are referred to, and the difference of rent stated. A condition providing that the purchaser shall assume that the original lessee was well entitled to grant such lease, and shall make no objection or requisition by reason of such lease being in excess of the term originally granted, is a fair and a proper condition, inasmuch as it goes on to state that intending purchasers may inspect the lease and sub-lease (at a place specified) ten days before the sale. Dictum, that where a sub-lessee's lease is in excess of his lessor's term, the lessor has a right of distress notwithstanding such excess, provided there is a rent reserved. *Semble*, the honest purpose of a condition of sale is that the vendor may not put up a better title than he has, and if a purchaser does not take pains to read the conditions, and take advice, if necessary, of their legal effect, the Court of Chancery will not assist him. *Smith v. Watts*, 7 Week. Rep. 126.

CORRESPONDENCE ON MOOT POINTS.

The following are the only additional names to be added to the lists of correspondents on the *New System*, *ante*, pp. 36, 79, 80:—Mr. J. F. Halton, at Messrs. Lowndes, Ba'eson, & Co.'s, No. 3, Brunswick-street, Liverpool; Mr. E. Hughes, No. 148, High-street, Woolwich; Mr. E. Johnson, Spout-street, Leek, Staffordshire; Mr. C. M. Morris, at Messrs. Lowndes, Bateson, & Co.'s, No. 3, Brunswick-street, Liverpool.

Mr. Michelmores's Christian name (p. 79) is not F., but H.; it will therefore stand thus: "Mr. H. Michelmores, Exeter."

Articled Clerks.

ARTICLES OF CLERKSHIP.—*Omission to enrol in due time—Defect supplied.*—A motion was made upon affidavits, that the service of an articulated clerk might be computed from the date of the articles, although they had not been enrolled as required by 6 & 7 V. c. 73, s. 8. The affidavits showed that the omission had been without the knowledge or control of the clerk, and that he had not been guilty of any negligence, and the application was granted. *Ex parte Bagnall*, 32 Law Tim. Rep. 74.

ARTICLES OF CLERKSHIP.—*Service by B. A.*—6 & 7 V. c. 73, s. 7. —A person who takes a degree of B. A. after the commencement of his service as an articulated clerk to an attorney, cannot avail himself of sec. 7 of 6 & 7 V. c. 73, so as to be capable of being admitted as an attorney, upon having served a clerkship of three years. *Ex parte Bradford*, 7 Week-Rep. 188.

Vendors and Purchasers.

SPECIFIC PERFORMANCE. — *Covenant — Fences — Highway.* — In Smith's Leading Cases (p. 22, 3rd ed.) it is said, that general covenants do not run with the land as against the assign of the covenantor; but by express stipulation this may be effected in equity. Where in a suit for specific performance it appears that a covenant has been entered into by a former purchaser of the property, for himself, his appointees, heirs and assigns (to the intent that it should run with the land), with the owners and occupiers for the time being of certain adjoining lands, at all times thereafter at his and their expense, to make and maintain the boundary fences between the lands, and abutting on a road (afterwards made); the question of the obligation being binding on a future purchaser, is too doubtful to admit of the title being forced upon him. *Semble*, there is no general law imposing the obligation on the owner or occupier of lands abutting on a public road to keep up the fence. *Potter v. Parry*, 7 Week. Rep. 182.

POWER OF SALE. — *Duration — Distinction between limited and unlimited trusts.*—If an estate be given in trust for certain persons as tenants in common in fee, with a general power of sale in the trustees, the power is invalid; because if good at all, it must be good in perpetuo. But if the estate be given to trustees for certain persons for life, with remainders in fee, and a power of sale in the trustees, this power will subsist until the trusts are exhausted; and the persons in remainder are entitled to call on the trustee to convey the absolute interest; and the circumstance that the person entitled to one share is in a position to call for a conveyance while the trusts of the other shares still subsist, will not prevent the operation of the power. This will explain the following decision, where the case was

that freeholds were devised to the use of trustees and their heirs, in trust as to two undivided fifths for two persons in fee, and as to the other three-fifths, upon trusts, for certain persons for life, with remainder to their children in fee; and a power of sale was given to the trustees after all the trusts were exhausted except those of one share: Held, that a good title could be made under the power. *Taite v. Swinstead*, 7 Week. Rep. 374.

CONTRACT.—*Evidence—Statute of Frauds—Reference of title where contract disputed.*—A. entered into a treaty with B.'s agent for the purchase of leasehold premises, fixtures, and furniture, and, in going over the premises, pointed out the articles of furniture which he would take at a valuation, of which the agent made a list. No agreement was executed or signed, but in the letter which passed between A. and the agent, A. consented to take the lease, and added "the other articles which you included in your list, I will also take at a valuation:" Held, that this was a sufficient note in writing, signed by the party, to take the case out of the Statute of Frauds; that parol evidence was admissible to show who was the principal; that as the defendant disputed the contract, the court will only allow the common reference as to title, without the inquiry when a good title could be shown. *Morris v. Wilson*, 38 Law Tim. Rep. 56

LEASE OF GLEBE.—*Reservation of rent quarterly—Specific performance—5 V. sess. 2, c. 27—Practice—Agreement void, discovered after decree.*—The direction in the 5 V. sess. 2, c. 27, that leases of glebe shall reserve the rent quarterly, is imperative, and an agreement for such a lease, reserving rent half-yearly, cannot be specifically performed, even though the patron and ordinary should be willing to consent. After a decree for specific performance, and a subsequent discovery that the agreement is void. *Semble*, that the proper practice is to dismiss the bill, notwithstanding the previous decree. *Jenkins v. Green*, 7 Week. Rep. 304.

Notices of New Books.

SWABEY AND TRISTRAM'S PROBATE COURT REPORTS.

Reports of Cases decided in the Court of Probate, and in the Court for Divorce and Matrimonial Causes, commencing Hilary Term, 1858. By M. C. MEERTINS SWABEY, D.C.L., Advocate in Doctors' Commons, and of Gray's Inn, Barrister-at-Law; and T. H. TRISTRAM, D.C.L., Advocate in Doctors' Commons, and of the Inner Temple. London: Butterworths. 8s.

This is the second part of the reports of cases in the Probate Court, by Drs. Swabey and Tristram, the first of which we noticed in our former volume. To the practitioners in that court it must be indispensable, especially as the judge does, as the judges of the other courts do—namely, act upon the reports by the reporters of the Court in preference to those

given in the weekly publications, which are always considered as of no permanent value, and only allowed to be cited in the absence of a better report.

Summary of Decisions.

EQUITY AND CONVEYANCING.

ANNUITY—*For life where no express period*—*Gift of a portion of dividends*—*Survivor*—*Statute de Donis*—*Estate tail*—*Absolute interest where annuity payable out of personalty*.—An annuity to A. and the heirs of his body since the Statute de Donis does not create an estate tail, an annuity not being expressed by the word "tenement." A gift of an annuity out of personalty without words indicating its nature, may give an absolute interest, unless there is an intention to the contrary. An annuity without words of direction or termination is a life annuity, and a direction to invest does not alter it. A gift of a portion of dividends stands on a different footing from a mere gift of an annuity simpliciter, being a gift of an aliquot part of a capital fund. A testator gives a particular sum of annual dividends in trust to pay three persons an annuity of £20 each during their lives, and he directs that the remainder of the said dividends should be paid to A. during his life, and as and when the three persons first named should depart this life, the three several annuities of £20 each should devolve and be paid to A. and two other persons; the eldest taking the first of the said annuities that should fall, and the other in like manner by seniority, and after the death of the survivor of them, the said A. and two persons last named, then over: Held that each annuity continued until the death of the survivor of the three last named persons. *Bignold v. Giles*, 7 Week. Rep. 195

CLERGY.—*Gilbert's Act*, 17 G. 3, c. 53—*Parsonage repairs*—*Additional buildings*—*Advance of money by incumbent*.—The authority given by the above-mentioned act to borrow money to be expended in the building or repairing of the parsonage-house extends to the making of additional buildings, if necessary, and an incumbent may himself advance money for that purpose. *Boyd v. Barker*, 32 Law Tim. Rep. 350.

COPYHOLDS.—*Fines*—*Tenant for life and remainderman*.—Where copyholds are devised in trust for one for life, with remainder over, the fines, on admission of new trustees, are to be borne by the tenant for life and remainderman in proportion to the value of their respective interests. *Carter v. Sebright*, 7 Week. Rep. 225; 32 Law Tim. Rep. 348.

DISENTAILING DEED.—*Protector of settlement*—*Married woman*—*Fines and Recoveries Act* (3 & 4 W. 4, c. 74).—By a settlement and appointment prior to 1833, an estate for life was limited to M., a married woman, for her separate use, with remainders over in tail. A disentailing deed was executed by the remainderman, with the consent of M., as protector of the settlement, but without the concurrence of M.'s husband:

Held, that M. alone was protector of the settlement, and that the concurrence of her husband to the disentailing deed was not necessary. *Keer v. Brown*, 7 Week. Rep. 372.

FEME COVERT.—*Reversionary choses in action.*—*Divorce and Matrimonial Causes Acts*—*Desertion*—*Protection*—*Title to property.*—Where a married woman, entitled to a legacy in remainder, is deserted by her husband, and obtains protection, upon such legacy falling into possession, the Court of Chancery will order payment to her under the 21st section of 20 & 21 V. c. 85, and 21 & 22 V. c. 108, s. 8. *In re Raindon's Trust*, 7 Week. Rep. 184.

FIXTURES.—*Mortgage—Machinery of iron rolling mill.*—A mortgage of a rolling mill included certain machinery and other particulars specified in a schedule, and also all engines, machinery, fixtures, and things which might thereafter be fixed and fastened in or upon the premises, whether in addition to, or in substitution for, the said fixtures, machinery, articles, and things specified in the schedule: Held, that the general words included new machinery as well as new parts added to the old machinery. Construction of the words "fixed and fastened" in various particular instances. *Metropolitan Counties Assurance Society v. Brown*, 7 Week. Rep. 303.

GIFT BY WILL OF FARMING EFFECTS.—*Articles quæ ipso usu consumuntur*—*Tenant for life and remainderman*—*Inventory.*—Where there is a bequest to one for life, with remainder to another, of goods which must be consumed by a proper use of them, the remainderman will not take anything. This is well illustrated by the following case and decision: A testator, who was a tenant farmer, bequeathed his household goods, &c., "together with all his live and dead farming stock, implements, and all other his household and farming effects" to his wife for life, or for so long as she should continue his widow. He further directed, that after his decease an inventory might be taken of the said personal estate, and that two copies be made of the same, one to be delivered to his said wife, and the other to be signed by her and kept by his executors. He gave no direction, however, as to any valuation of his personal estate, or any part thereof. And if his said wife should marry again, testator bequeathed all and singular his said personal estate and effects in trust for certain legatees as therein mentioned. After the testator's death, an inventory of his personal estate generally was made for the purposes of probate duty, but no inventory was signed as directed by the will. The widow married again, whereupon the legatees in remainder claimed that the widow and her husband might be charged with the value of the following articles included in the inventory above mentioned, viz.—"Growing turnips and roots, fallows, labour, seeds, and manure layers; manure made and not carried out on the farm; wheat, barley, beans, peas, and straw, and haulm severed from the ground; oxen, sheep, and pigs." Some of these articles the tenant was bound to consume on the farm others not: Held, as the testator had not directed a valuation, that the established rule of the court must prevail, viz.—that the legatees in remainder could not call for an account in respect of farming effects of a consumable nature specifically bequeathed which

had been actually consumed by the tenant for life in the ordinary course of husbandry. *Bryant v. Easterson*, 32 Law Tim. Rep. 352.

HEIR DISPUTING WILL.—*Discovery*—20 & 21 V. c. 77—*Heir-at-Law*—*Devisee*—*Will of real estate*—*Injunction*—*Jurisdiction*—*Costs*.—The Court of Chancery will, at the suit of the heir-at-law contesting a will of real estate, restrain the devisee from proceeding in the Court of Probate to prove the will in solemn form until he has put in his answer to a bill of discovery filed by the heir in aid of his contest as to the invalidity of the alleged will. The heir, however, is not entitled to move to stay proceedings until his interrogatories have been filed. The New Court of Probate, established under 20 & 21 V. c. 77, has not those powers as to wills of real estate for the purpose of obtaining discovery so as to oust the jurisdiction of this court, which were possessed by the former court, as to the wills of personal estate, and, *semble*, that it has not, as to personal estate, either. *Fuller v. Ingram*, 7 Week. Rep. 202.

INJUNCTION.—*Building*—*Obstruction of light and air*.—The court will grant an injunction to restrain the erection of a proposed building which would materially affect the comfort and enjoyment in respect of light and air uninterruptedly enjoyed for twenty years by the inhabitants of the adjoining house, unless the plaintiff, the owner of that house, has by his own act at any time during that period, made an obstruction as great as that in respect of which he seeks relief. *Arcedeckne v. Kelk*, 7 Week. Rep. 194.

MORTGAGE—*Paid off*—*Judgment after payment, but before re-conveyance*—*Judgment against municipal corporation*.—A mortgagee, whose mortgage has been paid off, cannot tack a judgment obtained after the payment, but before re-conveyance, in an action on a covenant entered into before the payment of the mortgage debt. Whether a judgment is a lien on the property of a municipal corporation—*Quere*. *Beacon v. Seymour*, 7 Week. Rep. 380.

NEW TRUSTEES.—*Trustee Act*—*Separation deed*.—The court will appoint new trustees of a separation deed, without entering into the question of its validity. *Re Matthews*, 7 Week. Rep. 224.

PARTNERSHIPS.—*Joint Stock Companies Act of 1856*—*Shareholder*—*Agreement to accept shares*—*Specific performance*—*Partnership*—*Plea*.—A plea admitting the case made, but denying legal liability on that case, is bad. A plea must bring forward a fact displacing the equity by something new. A court of equity will decree specific performance of a contract to form a partnership, and will interfere in any case where a court of law cannot sufficiently redress the injury received by breach of the contract. The same principle which governs a court of equity in decreeing specific performance of a contract to purchase land is also applicable to personal chattels, but the court will not make a decree which the defendant can render nugatory. The difference between a partnership and a joint stock company is, that a shareholder cannot dissolve the partnership by retiring, whereas a partner can; and therefore a decree specifically to perform a contract against a shareholder at the suit of the company would not be

nugatory. A defendant, who agrees to accept shares in a joint stock company by a form filled up and signed by him, enters into a valid binding contract, which this court will enforce, and a plea put into a bill seeking to enforce such contract, which merely denies the legal liability, over-ruled with costs. *The New Brunswick and Canada Railway and Land Company (Limited) v. Muggeridge*, 7 Week. Rep. 369.

PUBLIC COMPANIES.—*Joint Stock Companies Winding up Acts—Contributory—Forfeiture of Shares—Acquiescence and lapse of time.*—Where there is no clause in the deed of a joint stock company, conferring on the directors a general power to forfeit shares, they have no inherent power to do so. Where directors, assuming that they have power to do so, forfeit shares, and such shares are re-issued and sold, the original shareholder, although he may not have executed the deed, and the directors have no such power, is not discharged from liability after the lapse of four years from the re-issue and sale. The doctrine of acquiescence and lapse of time does not apply to dealing with shares in a joint stock company. *Ex parte Barton*, 7 Week. Rep. 369.

PUBLIC COMPANY.—*Borrowing money—Profit by director—Directors.*—The articles of association of a company, whose business consisted of borrowing and lending, contained a clause empowering the company to borrow on the director's own individual responsibility, or on other securities: Held, that a director was entitled to make a profit by lending his own money, at interest, to the company. *Black v. Mallalue*, 7 Week. Rep. 303.

TRADE MARK.—*Manufacturing article with mark not customers—Injunction—Costs.*—Where A. is ordered by B. to manufacture an article and stamp it with a trade mark, not B.'s, that alone leads to suspicion, but A. having caused the article to be manufactured, and admitted having casually heard of the party entitled to use such trade mark, must submit to a perpetual injunction, and pay the costs. *The Collins Company v. Walker*, 7 Week. Rep. 222.

WILL.—*Construction—Devise of lands with their "appurtenances."*—Where a testator devised all his freehold, copyhold, and leasehold lands, situate in the parish of C., with their appurtenances: Held, that land in adjoining parishes, which had always been occupied with the lands in the parish of C., did not pass under the word "appurtenances." *Evans v. Angell*, 32 Law Tim. Rep. 382.

EQUITY PRACTICE.

PAYMENT OF MONEY INTO COURT.—*Administration-suit—Plaintiff's title as next-of-kin in dispute.*—When an executor or administrator admits that he has a fund in hand, it is a matter of course to order it to be brought into court. Where a suit was instituted by a person claiming to be one of the next-of-kin of an intestate, on the assumption that the intestate's son predeceased him, on a motion by the plaintiff for the appointment of a receiver, or payment of money into court, supported by evidence of the plaintiff's title: Held, that a prima facie evidence of title was sufficient to entitle the plaintiff to ask that the money should be secured in court. *Danby v. Danby*, 32 Law Tim. Rep. 348.

PRODUCTION OF DOCUMENTS.—Mortgagee—Notice of fraud—Application of mortgage money.—As an abstract proposition, a plaintiff has a right to have inspection of every paper and writing in the possession of the defendant which will assist the plaintiff's case, but he has no right to see any document in the defendant's possession only tending to make out the defendant's case; and if the two cases are founded on different deeds, the defendant's destroying the plaintiff's case, the plaintiff has no right to inspection, but must wait till the hearing. The case of a mortgage has been, by some, supposed to stand on some special footing, but it can hardly be said to do so; it is only a peculiar case to which the principle is applicable. Where a mortgagor files a bill against a mortgagee, ordinarily speaking, he can not see the mortgage deed without redeeming. There may be cases in which a mortgagor, or a person in the same situation, may have a special case to intitle him, because it may make out the plaintiff's case; but a mortgagee, ordinarily, may put the deeds in a box, sit upon it, and defy the mortgagor to make him move from it, until he engages to pay principal, interest, and costs. If a mortgagor files a bill simply to redeem, and states the mortgage deed in his bill, and the defendant by his answer, as he is bound, admits it to be to the effect stated, when the cause comes to a hearing, the mortgagor has a right to redeem in accordance with the deed, and there is then for the first time a right to see the deed. These observations will serve to introduce the following points recently decided by V. C. Kindersley: A plaintiff has a right to inspection of any document in the defendant's possession which will assist him (the plaintiff); and a mortgagor has the same right, although, ordinarily speaking, the mortgagee is not compellable to produce his deed, except upon payment of principal, interest, and costs. Where, by the ordinary rule, the plaintiff has no right to the production of a deed, a reference to that deed in the answer "for the greater certainty," does not intitle him to such production; but where the defendant sets up this deed, and refers to it, the plaintiff has such right if it will assist his case. A mortgagee who advances money to a trustee to pay debts and general and not specific legacies, is not bound to see to its application, unless he knows of a fraud by the trustee. Where a plaintiff (not mortgagor) charges a mortgagee with knowledge of a fraudulent purpose to which the money advanced by him was applied, and the mortgagee denies that, but admits possession of the mortgage deed, and craves leave to refer to it, the plaintiff is not entitled to the production of that deed. A prior mortgagee has no right to see the deed of a subsequent mortgagee. *Howard v. Robinson*, 7 Week. Rep. 223.

PRODUCTION OF DOCUMENTS.—Pleading—Practice—Exceptions to answer.—A defendant, in answer to an interrogatory as to production of documents, submitted, that as the plaintiff might obtain discovery and production of documents by means of summons at chambers, he forbore, on account of expense, to answer that interrogatory. Upon exceptions to the answer to this interrogatory, the court refused to make any order, except that the defendant's costs should be costs in the cause—the court discouraging exceptions to answer to interrogatories for production of document. *Kidger v. Worswick*, 32 Law Tim. Rep. 269.

RAILWAY COMPANY.—*Costs*—*Several reinvestments in land.*—Where more than one reinvestment in land has been made of railway purchase money, and another is proposed to be made, if such reinvestment appears to the court to be for the benefit of the parties, the company must pay the costs. *Ex parte The Trustees of Saint Bartholomew's Hospital*, 7 Week. Rep. 224.

COMMON LAW.

ATTORNEY AND CLIENT.—*Infant plaintiff*—*Damages.*—An infant sues by his father as his next friend, and recovers damages in the action; those damages, as also the infant's expenses as a witness, were paid to the plaintiff's attorney in the action. The infant sues (by his father, as next friend) the attorney to recover those damages and expenses: Held, that, the money not having been paid to the prochein amy, the action was rightfully brought by the infant as plaintiff to recover it. *Collins v. Brook*, 82 Law Tim. Rep. 357.

FIRE INSURANCE.—*Goods held in trust as carriers.*—The following case, as to the insurance by carriers, and their right to recover in respect of customers' goods, though the insurance was not effected by the desire or to the knowledge of the customers, is one of great importance. It appeared, that, by a policy of insurance between the plaintiffs and the defendants, a warehouse and goods, the property of the plaintiffs, and goods to the value of £15,000, declared to be held by them in trust, as carriers, were insured against loss by fire. The policy contained a condition that all goods held on trust, or on commission, shall be insured as such. The warehouse and goods were destroyed by fire in December, 1854. A part of the goods held by the plaintiffs as carriers—viz., silks, &c., had been delivered to them without their nature and value being declared: Held, that the plaintiffs did not by this policy insure their own risk as carriers only, but the value of the goods, and that they were entitled to receive the whole value, although they were protected by the Carriers' Act in respect to loss to the goods not declared at the time of delivery. Held, also, that the plaintiffs would hold the money paid on account of the goods in trust for the owners, to be paid to them. *London and North Western Railway Co. v. Glyn*, 7 Week. Rep. 238.

INSOLVENT'S SCHEDULE.—1 & 2 V. c. 110, s. 75—*Indorsee of bill of exchange.*—By the 1 & 2 V. c. 110, s. 75, a prisoner petitioning under that act is entitled to the benefit of the act as to the claims of all persons not known to the prisoner at the time of the adjudication, who may be indorsees or holders of any negotiable security set forth in the schedule. Where an insolvent debtor, who was ignorant that a bill accepted by him had been indorsed, inserted in his schedule the name of the drawer as a creditor for the bill, and took no notice of the indorsee: Held, that he was entitled to the benefit of a discharge, under sec. 75 of 1 & 2 Vic. c. 110, as against the indorsee. *Booth v. Coldman*, 7 Week. Rep. 288.

LANDLORD AND TENANT.—*Insurance against fire by landlord*—*Destruction of premises by fire*—*Receipt of insurance money by landlord*—*Action for use and occupation.*—Where the landlord insures the premise

against fire, and they are destroyed, and he receives the insurance money from the fire office, he may maintain an action for the rent of the premises, although he does not lay out the money so received in rebuilding them. *Lofts v. Dennis*, 32 Law Tim. Rep. 273.

LIBEL.—*Proof of handwriting—Admission of evidence without objection—C. L. P. A. 1854, s. 27.—Media of proof.*—The C. L. P. A. 1854, s. 27, enacts, that "comparison of a disputed writing with any writing proved to the satisfaction of the judge to be genuine, shall be permitted to be made by witnesses, and such writings, and the evidence of witnesses respecting the same, may be submitted to the court and jury as evidence of the genuineness or otherwise of the writing in dispute." In an action for libel, to prove that the libels declared on were written by the defendant, certain documents, admitted to be in her handwriting, were used as standards of comparison; and the plaintiff called several witnesses, and, to support and strengthen such evidence, he produced seven anonymous letters, generally relating to the same matters as the libels declared on. This evidence was admitted to prove malice; and they were also used as a comparison of the handwriting in dispute; and no objection was made by defendant's counsel: Held, that these seven anonymous letters were admissible; that they were relevant to the issue to show malice; but that, if a proper objection had been made at the time of the trial, they could not have been received as evidence of handwriting. *Hughes v. Dinorben*, 32 Law Tim. Rep. 271.

PRINCIPAL AND AGENT.—*Sale to the agent of an undisclosed principal—Liability of the principal when discovered—Laches of the vendor.*—A vendor, who sells to a person known to be the agent of an unknown principal, must elect to proceed against the principal within a reasonable time after discovering him; otherwise he loses his right to treat the principal as a vendee, if the state of the account between the latter and his agent has been altered to the prejudice of the principal before he makes his election. *Smethurst v. Michell*, 7 Week. Rep. 226.

RAILWAY AND CANAL TRAFFIC ACT.—17 & 18 V. c. 31—*Rehearing.*—The court will not entertain an application to rehear and to vary or rescind an order made under 17 & 18 V. c. 31, except upon a new state of facts which go to impeach the whole of the grounds upon which the order is based. *Baxendale v. The Great Western Railway Co.*, 7 Week. Rep. 190.

STATUTE OF FRAUDS.—*Warranty—Contract to answer for the debt of another.*—The question whether a particular case comes within the provision of the Statute of Frauds requiring the promise to answer for the debt, default, or miscarriage of another to be in writing, depends, not on the consideration, but on the fact of the original party remaining liable; there must, however, be an absence of liability on the part of the defendant or his property, except such as arises from his express promise (1 Will. Saund. 211). A., being the ultimate purchaser of goods, of which B. was the original seller, applied to B. for them. B. refused to deliver them, unless A. undertook to pay the amount of his lien for the purchase money, which A. accordingly did: Held, that this undertaking need not be in writing, as

it was not a contract to answer for the debt of another within the Statute of Frauds. *Fitzgerald v. Dressler*, 7 Week. Rep. 190.

USE AND OCCUPATION.—*Rent—Evidence for the jury.*—According to the old authorities, a rent-service is of common right, whilst a rent-charge or rent-seck is not so (Litt. s. 213). It is some evidence to go to the jury in support of a count for use and occupation, that a fixed payment has been made for many years, in respect of the lands in question, by the defendant to the plaintiff, the defendant abstaining from all explanation of the origin or grounds of that payment, which it seemed he was able to give. *Hardon v. Hesketh*, 7 Week. Rep. 186.

COMMON LAW PRACTICE.

ARBITRATION.—*Compulsory—Agreement to refer—staying proceedings under s. 11 of the C. L. P. Act, 1854.*—There is no power under the above statute to stay proceedings in an action, unless the agreement to refer to arbitration is contained in the instrument upon which the action is brought. *Blyth v. Lafone*, 7 Week. Rep. 189.

INTERROGATORIES.—17 & 18 V. c. 125, s. 51.—*Document supposed to be lost—Proof of loss.*—If it be shown, *prima facie*, that a document is lost, the defendant may be examined upon interrogatories as to the contents of it; but the answers are not available at the trial unless it be shown in the usual way that the document cannot be then produced. *The Wolverhampton New Waterworks Company v. Hawksford*, 7 Week. Rep. 244.

NEW TRIAL.—*Where verdict under £20.*—The following illustrates the proposition that new trials are not in general granted where the verdict is under £20 (see Com. L. Pract. 200, 201). The action was for wrongfully seizing the goods of the plaintiff under a warrant against a third party, and the jury having returned a verdict for the plaintiff for £5, the defendant moved for a new trial; it was held that the question having been left to the jury, the rule that a new trial will not be granted where the damages are under £20, on the ground of the verdict being against the evidence, applied, and the verdict could not be disturbed. *Tarlinton v. Starey*, 7 Week. Rep. 188.

STAYING PROCEEDINGS.—*Sum under forty shillings.*—A debtor sent his creditor a banker's draft, payable at seven days after sight, for a sum less by five shillings than the whole debt; the creditor retained the draft, which had been presented by his clerk, and accepted by the bankers, and subsequently and before the expiration of the seven days, brought an action for the whole amount of the debt. The court stayed the proceedings on the payment of the five shillings, without costs. *Stuart v. Cause*, 7 Week. Rep. 187.

TENDER.—*Pleading—Demurrer.*—The plea of tender in the usual form is good, though pleaded to the common counts; and a replication, that a sum paid is not sufficient to satisfy the plaintiff's claim in respect of the said sum, is bad. *Smith v. Manners*, 32 Law Tim. Rep. 277.

WRIT OF SUMMONS.—*Service of writ upon joint stock company—The Joint Stock Companies Act, 1856, s. 53.*—By the 19 & 20 V. c. 47, s. 53,

"Any summons or notice requiring to be served upon a company may, except in the case where a particular mode of service is directed, be served by leaving the same or sending it through the post addressed to the company at their registered office, or by giving it to any director, secretary, or other principal officer of the company." The defendants are a company, having an office at Limerick, but no office in this country, and the writ was served upon a director of the company in this country: Held, that the words "any summons" in the above section do not include writ of summons; and that service upon the director was a good service on the company. *Towne v. The London and Limerick Steam Ship Company (limited)*, 32 Law Tim. Rep. 277.

PROBATE AND DIVORCE.

WILL.—*Proving will in solemn form*—*Heir-at-law cited*—*Plaintiffs and defendants*—*Costs*—20 & 21 V. c. 77, ss. 29, 61, 64, 65.—By the 20 & 21 V. c. 77, s. 51, where proceedings are taken under that act for proving a will in solemn form, or where in any other contentious cause or matter under the act the validity of a will is disputed, unless the will affects only personal estate, the heir-at-law, devisees, and other persons having or pretending interest in the real estate affected by the will, shall be cited to see proceedings, or otherwise summoned in like manner as the next-of-kin, &c. The 65th section leaves it to the discretion of the court before which, in any such suit or action, the original will shall be produced and proved, to direct by which of the parties the costs shall be paid. A., B., and C., executors, propounded a will and two codicils. D., an executor under the will, opposed the second codicil, pleading undue influence and fraud, and that testator was ignorant of contents. E., heir-at-law, was cited to see proceedings, and pleaded unsound mind and undue influence as regarded the will and first codicil, as well as the second codicil. The jury find a verdict for the plaintiffs, and the court condemned the defendants generally in the costs. On motion, on behalf of the heir-at-law, to review the decree as to costs: Held, that the position of the heir cited under the 61st section, is similar to that of the next-of-kin under the old practice, and that, having put such pleas on the record, and totally failed of proof, he was liable to costs; that as between the defendants, D. being, under circumstances, also liable to costs, the costs should be divided in proportion to the issues raised by their respective pleas. *Tyson v. Westrope*, 32 Law Tim. Rep. 285.

BANKRUPTCY.

CONVEYANCE BY PROVISIONAL ASSIGNEE.—*Property of no value to creditors.*—By the 1 & 2 V. c. 110, s. 68, where property of an insolvent is of no value to creditors, the Insolvent Court may direct conveyance by the provisional assignee where no other assignee is appointed. Where the property of an insolvent is subject to mortgages or other incumbrances of larger amount than the estate, if sold, would be sufficient to discharge, the Insolvent Court may, at any time after the order for hearing is gazetted, and no assignee appointed, upon sufficient notice being

given by advertisement or otherwise to such of the creditors as the court may direct, order the provisional assignee to make, or join in making, any conveyance or assignment of such interest as may be just and reasonable. *Re Blick*, 32 Law Tim. Rep. 357.

DEATH OF COMMISSIONER.—*Substitute for absent commissioner—Extent of powers.*—The Lord Chancellor appointed a substitute for a country commissioner who was ill, for two months, or till further order, under the 6th and 7th sections of the Bankruptcy Act, 1854 (17 & 18 V. c. 119). The commissioner died before the expiration of the two months: Held, that the power of the substitute expired at the death of the commissioner. *Ex parte Corles*, 7 Week. Rep. 220.

OPPOSITION.—*Adjourned hearing—Defective notice of original hearing.*—Where a creditor does not appear at the original hearing, it is not the practice of the court to let him in to oppose upon an adjourned hearing. But where the notice of an original hearing has been defective, in consequence of the omission of a residence, and an insolvent has been ordered to readvertise, the court will not exclude the opposition of a creditor who was prevented by illness from attending the original hearing. *Re Rogers*, 32 Law Tim. Rep. 357.

PROOF.—*Debt founded on felony—Prosecution of the felon—Surety-bond—Proof against the estate of the original debtor.*—Where a debt is founded on a felony, the creditor will not be permitted to prove upon the estate of the offender until he prosecutes him in good faith; the success or failure of the prosecution cannot interfere with the right to prove, if it be bona fide. The dividend will be reserved until there is time to proceed with the prosecution. A surety-bond given for the offender is no bar to the right of proof on the part of those to whom the bond is given. Although the proof is put forward to protect the surety, it is no objection to it, as the surety, by a bill in equity, could compel the creditor to prove against the original debtor. If the creditor had declined to prosecute, the right to prove would be lost. Where there is a reasonable litigation about a fund, the assignee will have his costs out of it. *Re M'Master*, 32 Law Tim. Rep. 288.

TRADER-DEBTOR.—*Admission in part—Second summons as to part admitted.*—The defendant, in a trader-debtor summons, having admitted a portion of the sum claimed, and made the usual affidavit of a good defence upon the merits as to the residue of the demand, whereby, in accordance with the principle laid down in *Oldfield v. Dodd*, 8 Ex. Rep. 578, no further proceeding in bankruptcy could be taken thereunder: Held, that the plaintiff was not at liberty to serve fresh particulars of demand and issue a fresh summons for the amount so admitted. *Ex parte Jones*, 32 Law Tim. Rep. 288.

TRADER-DEBTOR.—*Release of debt upon composition with creditor.*—Debts verbally foregone must be reckoned, and if together the amount exceeds £300, the jurisdiction is gone. Where the debts due by a petitioner (being a trader-debtor) at the date of the petition exceed £300, a release executed after the date of the petition of a portion of the trader's

liabilities, so as to reduce the total amount of debts within £300, will not give jurisdiction, there being no relation back from the date of the release to the date of the petition. *Re Best*, 32 Law Tim. Rep. 288.

CRIMINAL LAW.

APPEAL.—20 § 21 V. c. 43.—*Place for theatrical performance.*—6 § 7 V. c. 68.—The defendant, the owner of a booth or tent for theatrical performance, was summoned before the justices for holding a performance, not being duly licensed; the justices were of opinion that the defendant's booth was not "a house or other place of public resort," within the 20th section of 6 & 7 V. c. 68, and dismissed the complaint; on the requisition of the complainant, they afterwards stated a case for the opinion of this court: Held, first, that the justices had jurisdiction to state the case. The act empowers them to do so in case of an acquittal as well as of a conviction. Secondly, that they were right in dismissing the complaint. A tent or booth is not a house or other place of public resort within the act. *Davys v. Douglas*, 32 Law Tim. Rep. 288.

LARCENY.—*Adulterer taking away the husband's property with the wife—Direction to jury.*—The prisoner, who lodged at the prosecutor's house, knew that he would have to go out early one morning, and on the previous day engaged a porter to be near the house on that morning with his cart, and the cart attended accordingly. Having, with the assistance of the prosecutor's wife, packed up a quantity of her husband's property in boxes, he took the property away in the cart with her and her three children, and a fortnight afterwards was discovered living with her in a house taken in her name. At the trial of the prisoner, upon an indictment for stealing the property, the wife swore that they had not gone away for the purpose of committing, and had not committed adultery. The jury were directed that if they were satisfied that the prisoner and the wife, when they took away the property, went away for the purpose of committing, and had committed adultery, they ought to find him guilty; and if they believed the wife, and that they had not gone away with such criminal purpose, and had not committed adultery, he was entitled to an acquittal. The jury found him guilty: Held, that the conviction was right. *Reg. v. Berry*, 7 Week. Rep. 240.

PAUPER.—*Settlement:—Order of removal—Practice—Delivery of new grounds of appeal—Adjourning trial of appeal.*—An appeal against an order of removal was called on, and when the respondents were about to open the case, appellants applied to have the trial postponed, because of the absence of a material witness; the trial was ordered to be postponed, and in the meantime the appellants duly served the respondents with two new grounds of appeal before the following sessions: Held, that the appellants were at liberty to go into such fresh grounds of appeal, it being no part of the order of adjournment that no new grounds should be delivered. *Reg. v. Kendal*, 7 Week. Rep. 191.

POOR RATE.—*Occupation of land without a right to the game—Rate of assessment.*—A tenant occupied land under an agreement with his landlord

that he was to have no right to the game upon it. He was assessed to the poor rate upon the land value with the game. Upon an appeal against the assessment, it was agreed that the proper assessment should be—if for the land only, without a right to the game, £11 5s. 8d.; if with the game, £26 19s. 8d.: Held, that he ought to be assessed to the lower amount, as the occupier of the land only, without a right to the game. *The Queen v. The Inhabitants of Thurlstone*, 32 Law Tim. Rep. 275.

COMMON LAW.

LANDLORD AND TENANT.—*Covenant to repair*—*Condition precedent*.—In a lease for lives of a manor and demesnes, the lessee covenanted to repair and keep the premises in all needful and necessary reparations, having or taking in and upon the demised premises competent and sufficient housebote for the doing thereof, without committing waste: Held, that the covenant was an absolute and not a conditional, covenant to repair, with license to take timber for housebote. *Dean, &c., of Bristol v. Jones*, 7 Week. Rep. 307.

PROBATE DUTY.—*Estate and effects*—*Equitable conversion*.—The following points as to probate duty have been established by various decisions. First, the property to be valued in order to fix the amount of probate duty is, not the value of all the assets which the executor may ultimately administer by virtue of the will, but the balance of such part only as at the death of the testator was, before the late alteration in the law, within the jurisdiction of the spiritual judge by whom the probate was granted. This was settled by the *Attorney-General v. Dimond* (1 Cro. & J. 356), and the *Attorney-General v. Hope* (1 Cr. M. & R. 530), in the House of Lords. Upon this principle it was held, in the former case, that French rentes, and, in the latter, that American United States stock were not subject to probate duty, being locally situate out of the jurisdiction of the English ordinary. But the executor is the owner of all the personal estate of the testator, and the probate is essential to authenticate and prove his right to it. Secondly, that to entitle the Crown to probate duty, the estate and effects must be of some definite value. This arises upon the construction of the statute. They must be above the value of £20 to be liable to probate duty at all, and there may be many choses in action in respect of which the probate is granted and which would have belonged to the ordinary, but which nevertheless, are not subject to probate duty, because they are incapable of definite valuation. In the following case, it appeared that A. B., having made a valid agreement for the sale of a portion of his real estate for £115,000, of which £15,000 was paid as a deposit into the hands of a stakeholder, died before the conveyance was executed, but after his death the estate was conveyed, and the whole purchase money paid to the executor, it was held, that neither the £115,000, nor the £15,000 was liable to probate duty (*Attorney-General v. Brunning*, 7 Week. Rep. 308). The court, after observing that the result of the cases seemed to be that

the interest of the executor in a contract for the sale of freehold land by the testator, not conveyed to the purchaser at the time of death, is not subject to probate duty, said : "There is a test which seems to us conclusive—viz., is the purchase money of a freehold estate contracted to be sold, but not conveyed at the death of the testator, legal or equitable assets? If it be legal assets, it may be reached at law ; it is liable to the debts of the testator in the common law courts, and would have been liable to probate duty in the now abolished spiritual courts, as being within the jurisdiction of the ordinary. But on the other hand, if it be equitable assets, it is subject to the jurisdiction of the courts of equity alone ; neither the common law courts nor the spiritual courts ever had any control over it ; and then, according to *Attorney-General v. Hope*, it is not subject to probate duty. Now it is settled law that the proceeds of the sale of real property are equitable and not legal assets" (*Will. Exors. 1522 ; Barker v. Ma., 9 B. & Cr. 489*).

EASTER TERM EXAMINATION.

The Examination for Easter Term, 1859, will take place on Tuesday the 3rd of May, at half-past nine o'clock, a.m., at the Hall of the Incorporated Law Society, in Chancery Lane.

Every Candidate must answer in Common Law, Conveyancing, and Equity.

The Answers in the other branches will be taken into consideration "in summing up the merit of the general Examination."

Notices of Examination and Admission may be renewed within one week after the end of the Term for which they were given for "the then next ensuing term," but no admission can be had until the last day of the Term.

Moot Points.

No. 41.—*Inclosure—Reservation of Minerals.*

I have been pleased with the Moot Point at p. 72, and some of your correspondents' answers thereto, and having a somewhat similar point, I should be glad to have the opinion of your subscribers thereon. In my case an allotment was made to the lord in lieu of his "right to the soil," and the other waste lands were allotted to the commoners in fee. The last section of the act reserved to the lord all mines and minerals, "except the right to the soil as aforesaid." My case differs from No. 16, inasmuch as the word "clay" is absent, which I consider was a legislative declaration that "right to the soil" in the former part of the act was used in a limited sense, whilst in my case no argument is derivable from any similar word. I wish your correspondents to direct their attention to what seems to me (though, perhaps, I am wrong) an important point—viz., that the saving

clause is repugnant to, and inconsistent with, the earlier clauses of the act, and cannot, therefore, have operation. Suppose a man granted all his lands, and the mines and minerals thereunder, and at the conclusion of the deed excepted the mines and minerals, must not the exception be considered repugnant, and therefore void. If so, how does my case differ from this?

G. STRATFORD.

No. 42.—*Legacies Charged on Land—Sale.*

A testator gives several legacies, and charges same on his real estate, and then devises such real estate to trustees upon trust to sell, and directs the legacies to be paid out of the proceeds. There is a receipt clause exonerating purchasers from seeing to the application of their purchase money. Can a purchaser require the legatees to join in the conveyance to him, and if not, why not? The vendor's solicitor says it is clear that the legatees cannot be required to join, but refuses to give any reasons, or to refer to any authorities.

LEX.

No. 43.—*Appointment—Crown debts, &c.*

Has it been decided in any recent case that an appointment under a power exercised in favour of a purchaser will over-ride a judgment, but not a Crown debt, of which the purchaser has no notice?

T. M.

No. 44.—*Corporation—Actions—Malice.*

Can an action be maintained against a corporation aggregate where the injury which forms the subject matter of the action is malicious (Whitfield v. South Eastern R. Co., 6 W. R. 545).

L. L. D. S.

No. 45.—*Statute of Limitations—Residue under Will.*

A testator, after giving certain legacies, bequeathed the whole of his residuary personal estate to A. absolutely. The testator died more than forty years ago, and the executor has never paid any part of the residue, but he discharged all the testator's debts, and paid the pecuniary legacies more than twenty years ago. Does the statute of limitations preclude the residuary legatee from suing the executor for payment of the residue.

M. J. N.

No. 46.—*Stamps—Acknowledgment of Deed.*

Does the memorandum of acknowledgment of a deed by a married woman form part of the deed for the purpose of assessing the progressive stamp duty—e. g., if a deed without the memorandum be under thirty folios, but with it is above, must the deed have a 10s. progressive duty stamp affixed or not?

C.

No. 47.—*Marshalling Assets.*

A testator, by will dated in 1850, bequeathed various pecuniary legacies, and devised and bequeathed all his real estate, and the residue of his personal estate, to B. At his death, he was seised of real estate acquired both prior and subsequent to the date of his will; the personal estate was insufficient to pay debts and legacies. Are the legatees entitled to have the

assets marshalled (3 & 4 W. c. 104; *Mirehouse v. Scaife*, 2 M. & Cr. 695; 1 V. c. 26, s. 3). L. L. D. S.

No. 48.—*Mortgages—Deficiency.*

M. A. had two estates, B. and C., which he mortgaged to D. E. to secure £1,000. He then devised B. to his son James, and all the residue of his property, which, of course, included C., to his son Joseph, subject to the payment of all his debts, and appointed him sole executor of his will. After the death of the testator, Joseph mortgaged C. to F. G., to secure £1,200, and it was found that that estate was not sufficient to pay both mortgage debts. Is F. G. entitled to require that the estate B. should bear any part of the mortgage debt of £1,000. GEO. R. ROGERSON.

No. 49.—*Execution of Power—Attestation.*

The words of a deed were "It shall be lawful for A. B. and C. D. at any time during their joint lives, by any deed or deeds to be executed by them in the presence of one or more witness or witnesses, to revoke." A deed of revocation was prepared, and was executed by A. B., in the presence of two witnesses, and at another time and place by C. D., in the presence of one witness. Is this a due execution of the power?

GEORGE R. ROGERSON.

No. 50.—*Dower—Mortgage.*

On a mortgage of copyholds by conditional surrender only, and on which no admission was ever taken, the mortgagee's wife joined, and was separately examined. Very recently, the mortgaged premises have been enfranchised, and the mortgagor, being unable to pay the mortgage debt, and the premises being over-mortgaged, has proposed to release his equity of redemption. The mortgagee requires the mortgagor's wife to join in the release, which is objected to, on the ground that it is not necessary. Is this so? If the wife be a necessary party, will it suffice if she acknowledge the deed as on a freehold conveyance, or must she not do it in the Lord's Court? The enfranchisement acts do not appear to affect the character of the wife's freebench. The wife was married before 1834. J. LEE.

No. 51.—*Feme Covert—Acknowledging Deed.*

A married woman had a general power of appointment for her own benefit over real estate, exercisable whether covert or not, during coverture. She appoints the property to a purchaser, and the latter insists that the purchase deed shall also contain a granting clause by her (as well as her husband), so that the deed might, if necessary, operate as a grant. The vendor objects to this as entailing the expense of an acknowledgment of the deed, which would be unnecessary as a mere appointment. Is this correct, and cannot the purchaser insist on the grant also, and that, if necessary, the deed shall be acknowledged by the wife? The husband also refuses to join in the grant, and insists that it is not necessary: cannot the purchaser insist on his joining for such purpose, even though the wife is not obliged to grant?

O. R. B.

No. 52.—*Reconveyance—To whom to be made.*

A., by will, gave his real estate to B. (his wife) for life, and after her decease he gave the same to C. and directed him to pay certain legacies thereout, *the remaining portion* of his real estate to be disposed of as his said wife should thereafter direct. He appointed C. and D. his executors, and died leaving B. (his wife) surviving; B. afterwards appointed, by deed, *the remaining portion* of A.'s real estate (subject to his debts) to C. and D. upon trust for sale, &c. A. in his lifetime *mortgaged* (in fee) a portion of his real estate. B. is now dead, and C. and D. are desirous of paying off the mortgage in order to disencumber the property preparatory to a sale, but the mortgagee's solicitor *refuses to reconvey the property*, and says that *no person is named in the will to whom a reconveyance can safely be made.*

On the usual notice being given, and *tender of the money being made*, is the mortgagee bound to reconvey the estate, and if so, to whom?

What is the nature of C.'s estate? Who can make a good title to the property? What interest have C. and D. jointly in the property?

J. W.

No. 53.—*Settlement—Gift to A. and his Issue.*

By a deed of settlement of personal estate, the ultimate limitation was to A. and his issue. At the time of the settlement A. had no children, but since, both prior and subsequently to the limitation coming into operation, he had several children, and at the time of his death some were living having children living, and some were dead leaving children living, so that there were then children and grandchildren of A. Are they all, or any, and which of them entitled to the settled property as issue of A.?

H. W.

No. 54.—*Mortgage to Several—Joint Account.*

Two persons advance equal sums and take a mortgage to them for the total amount, stating that the money belonged to them on a joint account, and that the receipt of the survivor of them should be a good discharge, and that the representatives of either of them dying should not be required to join in the receipt. One of the mortgagees transfers, for a valuable consideration, his moiety of the mortgage money, and also of the mortgaged hereditaments to a third person, who gives notice of such transfer to the mortgagor and the co-mortgagee. The transferring mortgagee dies, and then the mortgagor wishes to pay off the mortgage and have a reconveyance. He insists (1) that the transferee of the moiety must join to pass the legal estate; 2, to give a receipt, contending that the transfer of the money and the notice thereof to him was a countermand of the authority given by the deed. Is the mortgagor right in either respect?

H. W.

No. 55.—*Appointment of New Trustees.*

Has there ever been a case in which it has been decided that a trustee who retires from a trust for the purpose of letting in new trustees, who, if

is expected by the cestuis que trust, will be willing to consent to a breach of trust, has been held liable. I know it has been decided that such a trustee, apprehending such to be the object of the cestuis que trust, is justified in applying to a court of equity, and laying the circumstances before the court; but I wish to ascertain whether he is bound to do this, and more especially where he has only a suspicion that this may be the object. Suppose the new trustees to turn out insolvent, and to have been such at the time of the retirement of the old trustee, would the latter incur any liability by reason thereof; in other words, was he bound to ascertain the solvency of the proposed trustees before transferring the trust property (money in the funds) to them? References to cases will oblige.

C. S. L.

No. 56.—*Joint and several Note—Dividends.*

About three weeks ago A. and B. gave to C. a joint and several promissory note, payable on demand to him or his order. A. is worth nothing; B. is entitled to some Chancery dividends for life. What is the cheapest and most expeditious and effectual mode of proceeding against him in order to enable C. to obtain those dividends until his demand is liquidated? Any voluntary act by B. is quite out of the question. Perhaps some gentlemen will be good enough to state the mode of procedure, and costs. W. M. S.

No. 57.—*Separate Use without Power to Anticipate—Sale.*

A. B. by his will, dated May 5th, 1831, devised unto trustees certain freehold property "Upon trust to pay the rents to C. D. (testator's sister), or to such person as she, by any writing under her hand, but not by way of anticipation, should appoint to receive the same during her life, to the intent that the same might be for the sole use of the said C. D., free from the control of any person she should happen to marry. And from and after the decease of the said C. D., in trust for all and every the child and children of the said C. D., in equal shares if more than one, as tenants in common, and their respective heirs and assigns for ever."

C. D. is married, and has three children; the youngest will attain twenty-one years of age in July next. C. D. and her children are desirous that part of the property should be sold, and have entered into an agreement for the sale thereof. The purchase is to be completed on the youngest child attaining the age of twenty-one.

The purchaser requires the trustees to join in the conveyance for the sale of the property. Would they not in so doing become personally liable to be called upon hereafter, the property being vested in them till the death of C. D.? or can they execute a conveyance to the purchaser, without incurring any responsibility, upon C. D. and her children joining in a general release to the trustees on the youngest child attaining twenty-one years?

R. J. B.

Answers to Moot Points.

No. 11.—*Appointment—Rights of Appointees* (pp. 71, 76).

The fund appointed is liable to debts (Wms. Exs. p. 1324). A married woman generally cannot be liable for debts, but there are special cases. However, it appears to me, on the authority of the case *Re Cholmondeley*, quoted in "*Trevor on Succession Duties*," p. 173, that this fund is liable to legacy duty; and the executor being liable for the payment of such duty, the fund in question should not be paid to the appointee without the assent of the executor, but may be paid to the executor alone. E. H.

No. 27.—*Partnership*.

I think the proper construction of these articles is that the money to be drawn out is only intended to be drawn in the event of profits being realised, and under the circumstances the partner has no right to draw on the partnership. C. F. W.

No. 27a.—*Articles of Partnership—Drawings on Account* (ante, p. 100).

I cannot find any case precisely in point; but it appears to me that, as the articles of partnership require the drawings on account to be accounted for on the division of profits, if it were shown, on the annual account being taken, that no profits had accrued, or that a partner had drawn out more than his share of the profits, all sums drawn out should be accounted for, and, if necessary, refunded, so as not to intrench upon the capital or upon each other's share of the profits. This I take to be the meaning of "accounting for the sums drawn out on the division of profits." Taken otherwise, it would be such a monstrous injustice as equity would never permit. CAUSIDICUS.

No. 29.—*Devise—Death of Devisee before Testator* (ante, pp. 100, 111).

The 33rd section of the Wills Act provides, "that where any person being a child or other issue of the testator to whom any real or personal estate shall be devised or bequeathed for any estate or interest not determinable at or before the death of such person, shall die in the lifetime of the testator leaving issue, and any such issue of such person shall be living at the time of the death of the testator, such devise or bequest shall not lapse, but shall take effect as if the death of such person had happened immediately after the death of the testator, unless a contrary intention shall appear."

Now, although it has been held that this clause does not apply to a testamentary appointment (*Griffiths v. Gale*, 12 Sim. 354; *Watk. Conv.* by White, 9th ed., 387), yet, assuming that B. has left issue, who survived the testator, I am of opinion that under the devise set out in the question, the issue are entitled to the property; but if B. left no issue surviving the testator, then she having died in his lifetime, the devise becomes lapsed, and would, supposing there is a residuary gift, fall into it. If, however, there is no residuary gift, the heir at law of A. (the testator) will be entitled to the property. J. G. B. EDWIN.

No. 29.—*Devise—Death of Devisee before Testator* (*ante*, p. 100)

I quite concur with the opinion of your correspondent (*ante*, p. 111) as to the freehold but not as to the copyhold estates. With regard to the latter, the devise was in fact the devise of a use, a direction to the lord to admit the devisee. Hence the trustee, the devise being to him, his heirs and assigns, took the whole legal estate, and all the subsequent limitations were necessarily mere equitable estates, and thus B., by the rule in Shelley's case would have had the equitable fee simple, which, by her death in the lifetime of the testator, lapsed, so that her heir took nothing.

GEORGE R. ROGERSON.

No. 30.—*Solicitor—Executor—Costs as between Solicitor and Client* (*ante* p. 101).

If a solicitor, being an executor, does professional business for the benefit of the estate, I think he is not entitled to his costs for such services beyond costs out of pocket (*Moore v. Fr.*, 3 My. & Cr. 45; *Fraser v. Pa.* 4 Y. & Coll. 515). But this rule will not preclude an executor who acts as a solicitor in a cause in which he is a party from being allowed against the estate that portion of the costs which his town agent is entitled to receive (*Burge v. Br.*, 2 Hare, 373). Nor a defendant trustee, who is a solicitor, from recovering his costs, which will be taxed as between solicitor and client (*York v. Br.*, 1 Coll. 260). Neither does this rule disentitle a solicitor acting in the capacity of trustee from claiming his charges on a special contract, nor under a will expressly authorising him to make such charges (*3 Beav.* 341).

M. C. G.

No 30.—*Solicitor—Executor—Costs as between Solicitor and Client* (*ante*, p. 101).

It is well-settled law that where a solicitor, who is an executor, does professional business himself for the benefit of the estate, he is not entitled to be paid his bill of costs for such services (*New v. Jo.*, reported in 9 Byth. Conv. 337, 338); but he will be allowed out of the estate the costs of his town agents in the cause (*Burge v. Br.*, 2 Hare, 373). Where the executor is a solicitor, it is sometimes provided by the will that he shall be allowed his professional charges; and the law does not interfere with such a provision (*3 Beav.* 341). An exposition of the law on the point will be found in 2 Williams on Exors., 1575.

CAUSIDICUS.

No. 32.—*Surrender of Lease—Underleases* (*ante*, pp. 101, 111).

By the 4 G. 2, c. 28, s. 6, where a lease, out of which other leases have been derived by way of underlease, is surrendered, it is not necessary that the underlessees should join, as by the effect of that statute the rent and covenants still remain; the new lease is to be good and valid without any surrender of underleases, and such underleases are to continue of equal force as if the original lease had continued (see *Burt.* pp. 716 n., 1062; *Watk.* by Merrifield, 513).

J. G. B. EDWIN.

No. 33.—*Agreement to Divide future Property among Family* (*ante*, p. 101).

I do not see how the agreement entered into by B. and his children can

be supported as against the claim of the heir-at-law, because at the time the agreement was made A. was living, and B. had not the smallest interest to settle. No person can assume dominion over property by operation of law until the time arrives which gives to that person such right, for no person can be another person's heir-at-law until the death of such person. In the present case, I am inclined to the opinion, that the time had not arrived which would have enabled B. to make a settlement of this property among his family. Under these circumstances, I think, the claim of the heir-at-law will prevail.

J. G. B. EDWIN.

No. 33.—*Agreement to Divide Future Property among Family*
(*ante*, p. 101).

I am decidedly of opinion that this agreement can be enforced.

There is no doubt that it is the rule of courts of equity not to enforce the specific performance of a voluntary agreement, or, what is more, a voluntary covenant under seal. Want of consideration is a sufficient reason for refusing the assistance of the court.

But the case is very different where the agreement is between members of the same family, and is in the nature of a family arrangement (see *Harwood v. Tooke*, 2 Sim. 192).

In *Naylor v. Winch* (1 Sim. & Stu. 565), Sir John Leach said: "Where a compromise of a doubtful claim is entered into fairly, and with due deliberation, and upon consideration, a court of justice cannot inquire into the supposed adequacy or inadequacy of the consideration." This, it is to be remarked, was said *not* of a family arrangement, but with reference to *ordinary* compromises, and, of course, the principle there stated as to the adequacy of the consideration applies with much greater force to family arrangements. In the case of *Wethered v. Wethered* (2 Sim. 183), it was held, that an agreement between two sons to divide equally whatever they might become entitled to under their father's will was not contrary to public policy. In another case of family compromise, it was held, that the smallness of the consideration did not assist the plaintiff's case, as the court will not consider the adequacy or inadequacy of consideration in a family agreement, especially between near relations (*Houghton v. Lees*, L. T. R. vol. 24, p. 201; L. C. vol. 1, 338).

Again, in two well-known cases, we have the opinion of Lord Eldon on the subject, in one of which, after showing that although a bargain may be unconscionable, yet it may be valid, he adds, "unless the inadequacy of the price be such as *shocks the conscience*, and amounts in itself to conclusive evidence of fraud in the transaction." In the other he says, "the inequality must be so gross, as that a man would *start at the bare mention of it*." Now, as all men's consciences are not governed by the same principles—some possessing a greater power of flexibility than others; insomuch, that where the high-toned sensibility of the moralist would be shocked and scandalised by the bare mention of a hard fought bargain, that of the keen, sharp-dealing, veteran stock-jobber would lead him to regard it as merely a happy business-like transaction—i' will follow that, to fix the standard of

inequality of consideration to that point which is to shock the conscience, would be to establish a medium as variable as human opinion itself, and would answer no other purpose than the endeavour to fix the length of each Chancellor's foot as the statute measure of the realm, which would be, according to a high legal authority, an uncertain measure indeed—"for one Chancellor has a long foot, another a short foot, and a third an indifferent foot" (see Selden's Table Talk, tit. Equity).

JOHN W. S. LAVENDER.

No. 33.—*Agreement to divide Future Property among Family* (ante, p. 101).

I think the agreement is a nudum nactum, and cannot be enforced, from the absence of any valuable consideration. Blood, natural love and affection, &c., are not a sufficient consideration to support a simple contract (Addison on Contracts, 16; Smith on Contracts, 90; Law Manual, 7th ed. 664). I do not see how the agreement can be considered as a family settlement. But there is another question arising out of this point, viz.: Can persons enter into binding contracts with regard to property in which they have no estate either in possession, reversion, or remainder, but which may possibly at some future time devolve upon some of them? I should be glad of information on the subject.

CAUSIDICUS.

No. 35.—*Devise—Dying without Issue* (ante, p. 101).

There appears to be a mistake in the statement of this point. I suppose the question ought to be—What estate does D.'s heir-at-law take in the property? Taking it in this light, it appears quite clear that D.'s heir-at-law takes an estate tail. In Powell on Devises, the law is thus stated:—"It has been settled, in a long series of cases, that expressions referring to a *dying without issue* of a person, unexplained by the context, whether applied to real or personal estate, are construed to import a general indefinite failure of issue at any period. Consequently, following a preceding devise or bequest to the person whose issue is so referred to, they create in him an *estate tail in the realty*, and an absolute interest in the personalty." There are many cases in the books confirmatory of the above extract; see, for instance, 3 Har. Dig. 2236, et seq. I see nothing to prevent D.'s heir from barring the entail, and making a good title to the property. CAUSIDICUS.

No. 35.—*Devise—"Dying without Issue"* (ante, pp. 101, 102).

I sent up a moot point for discussion, which I see is inserted in the number of the LAW CHRONICLE for the present month, and numbered 85, pp. 101, 102, the heading of which is "Devise—Dying without Issue." I very inadvertently made a mistake in setting it out. The question which I have put is this:—"What estate does D. take in the property?" Which should be:—"What estate does the *eldest son* of D. take in the property." I hope you will call the attention of the correspondents to this alteration and oblige

LEX.

No. 36.—*Accidental Breaking of Plate Glass* (ante p. 102).

The notion referred to by the mooter has no foundation in law, nor is there, so far as I am aware, any case bearing on the question. If the win-

dow was so situated that, with ordinary care, it was very liable to be broken, that circumstance would perhaps be taken into consideration by a county court judge, or a jury, in awarding damages. F. A. C.

No. 36.—*Accidental Breaking of Plate Glass Window (ante, p. 102).*

I am not aware of any case directly in point; nor is there any statute on the subject. Of course, if the window were broken by "accident," the case is not within the Malicious Trespass Act, so as to bring it under the jurisdiction of a justice of the peace.

The only remedy, therefore, is by an action on the case, in which it would be necessary to show that the defendant was solely in fault, and that the plaintiff could not, by the exercise of ordinary care, have avoided the consequences of the defendant's negligence (see *Davies v. Mann*, 10 M. & W. 546). That, perhaps, may have given rise to the notion that a plaintiff is not entitled to more than the value of an ordinary window, inasmuch as his putting a plate glass window there increased the damage which would otherwise have arisen from the defendant's negligence, and that he is consequently not entitled to an increased amount of damage, which arises from his own act in putting an unnecessarily expensive window in an exposed position. I question, however, whether that argument would be supported.

The defendant, as I conceive, must be liable for the whole damage caused by his wrongful act, or for none of it. He cannot, I take it, be liable only for so much damages as he would have been liable to if something else than a plate glass window had been there; and, consequently, cannot be liable for the price of a common glass window, when the window which he broke was a plate glass window (see *Justice of the Peace*, 1856, whence the above remarks are partly taken).

JOHN W. S. LAVENDER.

No. 37.—*Arson to Hemp or Flax Stack (ante, p. 102).*

If the mooter had laid his hand on the *LAW CHRONICLE*, and turned to page 267 of vol. 3, he would have discovered that in the case of *Regina v. Spencer* the prisoner was indicted under the 7 W. 4, and 1 V. c. 89, s. 10, for setting fire to a stack of grain, and convicted. The stack in question was of the flax plant, with the seed or grain in it, and the jury found that the flax seed was a grain, and it was held that the conviction was right (*Regina v. Spencer*, 2 Jur. N. S. p. 1212; 26 L. J. 16, M. C.; 3 L. C. p. 267).

JOHN W. S. LAVENDER.

No. 37.—*Arson to Hemp or Flax Stack (ante, p. 102).*

Unless the court would construe the word "tares" to include hemp or flax, which is more than doubtful, it appears to me that this offence does not come within 7 W. 4, and 1 Vic. c. 89, or any other statute creating it an indictable offence. In *Reg. v. Woodward*, 1 M. C. C. 323, the prisoner was indicted for setting fire to a stack of beans, and the judges decided that beans were included in the word "pulse." On the contrary, in the case of *Reg. v. Tottenham* (7 C. & P. 237), which was an indictment under 7 & 8 G. 4, c. 29, the court decided that a stack, the lower part of which consisted of coleseed straw, and the upper part of wheat stubble, was not a stack of

straw within the meaning of that act. If the offence cannot be brought within the first mentioned act, I think the offender may be indicted as for a misdemeanor at common law. If that course should fail he may be convicted summarily under the 24th sec. of 7 & 8 G. 4, c. 30. F. A. C.

No. 41.—*Inclosure—Reservation of Minerals (ante, p. 127).*

I do not consider that there is any material difference between this case and No. 16. If a man, as the mooter says, grants all his lands, and the "mines and minerals thereunder," and, at the conclusion of the deed, excepted the mines and minerals, the exception would be considered repugnant to the previous grant, and therefore void—because a deed is always construed against the grantor; but an act of Parliament is not liable to that construction. The lord of the manor is in every case entitled to the mines, as well as the soil, of the waste lands within his manor; the commoners, previous to inclosure, have no actual right to the soil, but merely a right of common for their cattle in respect of adjoining lands, gained by immemorial usage. By reason of the right so gained upon an inclosure of the manor, an allotment of the soil is made to the commoner in lieu of his right of common; but upon all inclosures, the mines and minerals are reserved to the lord. In my opinion, there is no doubt of the lord's right to the mines under the whole inclosure, or to his right of getting them from his adjoining land, subject to his liability to damage if he improperly works them.

In the case referred to at p. 72, I consider the word "clay" was intended to mean "surface clay," which I think was very properly excepted, as it could not be considered right that the lord should be at liberty to enter on the land inclosed and take the clay, thereby committing a waste and injury to the land. F. A. C.

No. 42.—*Legacies Charged on Land—Sale (ante, p. 128).*

I do not think the purchaser can require the legatees to join in this conveyance, as the receipt clause (if framed sufficiently) will effectually relieve him from seeing to the application of the money. The fact of the legacies being charged upon the land devised to the trustees is immaterial, for it is every day practice to give trustees the legal estate, and then a discretionary power of sale, which, if the purchaser's view in the Moot Point is sound, they could not exercise without the concurrence of the cestui que trust, as they stand in a similar (if not better) position to legatees whose legacies are charged upon the land (Sug. V. & P. 9th ed. 30, et seq.; Hayes' Concise Wills, 62). J. G. B. EDWIN.

No. 42.—*Legacies Charged on Land—Sale (ante, p. 128).*

The law as to the liability of a purchaser from trustees to see to the application of his purchase-money cannot be considered as settled; in every case the question is simply one of intention on the part of the author of the trust, and that the trustee's power to give receipts depends solely upon the degree of confidence which he has either expressly or impliedly reposed in them. Where the trust is for payment of debts generally, a purchaser is not bound to see to the application of the purchase-money, although he

has notice of the debts ; for a purchaser cannot be expected to see to the due observance of a trust so undefined. Nor is a purchaser bound to see the money applied where the trust is for payment of debts generally and also (as in the moot question) for payment of legacies ; because to hold that he is liable to see the legacies paid, would involve him in the account of the debts which must be first paid (see Sug. Vend. & Purch. 10 ed. vol. 3, p. 155 ; *Jebb v. Abbott*, and *Benyon v. Collins*, *Butler's n.* (1) to Co. Litt. 290, b., s. 12). However, if (as in the moot question) the intention of the testator be expressed, the trustees upon a sale apparently in pursuance of the trust, have, under all circumstances, a power to give receipts. I therefore think the trustees' receipt would be a sufficient discharge to the purchaser, and that he need not require the legatees to join in the conveyance to him.

GEORGE R. ROGERSON.

No. 42.—*Legacies Charged on Land—Sale* (*ante*, p. 128).

Unless the testator's debts are also charged on his real estate, I consider that the receipt clause does not exonerate the purchaser from seeing to the application of his purchase-money. If there is a charge of debts, the devisees in trust can make a good conveyance without the concurrence of the legatees (see *Dowling v. Hu.*, 17 Beav. 248).

F. A. C.

No. 42.—*Legacies Charged on Land—Sale* (*ante*, p. 128).

The reason why the legatees in such a case as the present could not be required to join in a conveyance seems to me to be that it would be entirely a superfluous act, and putting the vendor to unnecessary expense to accomplish an object (*i. e.*, the safety of the purchaser) which is already accomplished by the testator, when in his will he exonerated the purchaser or purchasers from seeing to the application of the purchase-money ; and I think that no purchaser *ought to, or can*, require it.

T. D. G.

No. 42.—*Legacies charged on Land—Sale* (*ante*, p. 128)

I am of opinion that in this case the purchaser cannot require the legatees to join in the conveyance to him. As respects moneys charged upon an estate by the author of the trust, there is a difference between charges, the satisfaction of which, by means of a sale, appears to be contemplated, and those for which the estate seems intended to be a continuing security. In this case it appears to me that the legacies were intended to be paid off at the time of the sale out of the proceeds, and, in such case the charge seems to be (as I take it) merely equivalent to a trust for payment out of the proceeds of the sale, and consequently the purchaser is not affected thereby (see *Page v. Adam*, 4 Beav. 269).

In this case there is an *express clause* exonerating purchasers from seeing to the application of their purchase-money, and therefore it is not necessary that the legatees should join.

I am of opinion, therefore, upon the whole, that the purchaser cannot require the legatees to join, and that the receipt of the trustees alone is sufficient.

J. W.

No. 42.—*Legacies Charged on Land—Sale (ante, p. 128).*

It has been decided that if a will contain a general direction to sell land, and it is *not* stated by whom the sale is to be made, if the produce of the sale is to be applied by the executors in the execution of their office, they will be considered as having the power of sale, and will be enabled to make a good conveyance of the legal estate in fee *without the concurrence* of the testator's heir-at-law (*Tylden v. Hy.*, 2 Sim. & Stu. 238; *Bentham v. Wi.*, 4 Madd. 44; *Sowersby v. La.*, 4 Madd. 142). But as, in this case, the trustees are directed to sell and pay the legacies out of the purchase-money, and the purchaser is not required to see to the application of the purchase-money, I consider the trustees alone can give a good conveyance to the purchaser, and the legatees cannot be compelled to join. C. J.

No. 43.—*Appointment—Crown Debts, &c. (ante, p. 128).*

Formerly, an appointment under a power defeated all judgments which were entered up against the donee of the power after its creation, on the principle that the appointee claimed immediately under the instrument by which the power was limited; but by 1 & 2 V. c. 110, explained by 2 & 3 V. c. 11, powers of appointment were deprived of this effect (except in the case of a purchaser without notice, in which an appointment will be as effectual in protecting him from judgments as it was under the old law). But debts due to the Crown constitute a lien on all the lands to which the debtor is entitled at the time when they became so due, or which he subsequently acquires, and consequently a purchaser without notice from the Crown debtor after the lien has attached, is bound by it, although he may have expended large sums for improvements.

No. 44.—*Corporations—Actions—Malice (ante, p. 128).*

As a general rule, a corporation cannot be guilty of a crime in its corporate capacity, yet it is liable in certain cases to an indictment (*Steph. Com.* vol. 3, p. 134, 4th ed.). In *Stevens v. the Midland Railway Co.*, and *Lander* (23 L. J. Ex. p. 328), Baron Alderson asks the question, "How can a railway company act maliciously? They act by their agents; but they do not make parties their agents to do wrong." T. D. G.

No. 45.—*Statute of Limitations—Residue under Will (ante, p. 128).*

The residuary legatee will be barred by the Statute of Limitations as to assets possessed by the executor more than twenty years ago, though he will not be barred as to assets possessed by him since that time (see *Adams v. Barry*, 2 Coll. 290, and *Williams on Executors*, p. 1741, 4th ed.).

T. D. G.

No. 45.—*Statute of Limitations—Residue under Will (ante, p. 128).*

It is enacted, by statute 3 & 4 W. 4, c. 27, s. 40, that "After the 31st of December, 1833, no action or suit or other proceeding shall be brought to recover any sum of money secured by any mortgage, judgment or lien, or otherwise charged upon or payable out of any land or rent, at law or in equity, or any legacy, but within twenty years next after a present right to

receive the same shall have accrued to some person capable of giving a discharge for or release of the same."

This statute applies to *legacies payable out of personal estate* as well as legacies charged on real estate (see *Sheppard v. Oake*, 9 Sim. 567), and also a residue bequeathed by will is clearly within the statute (*Prior v. Horniblow*, 2 Younge. & Coll. 200; *Christian v. Devereux*, 12 Sim. 264).

As it is stated in the Moot Point that the testator died more than forty years ago, I am of opinion therefore, after considering the foregoing authorities, that the residuary legatee is barred by the Statute of Limitations from suing the executor for payment of the residue. J. W.

No. 45.—*Statute of Limitations—Residue under Will (ante, p. 128).*

The residue is not now recoverable from the executor unless the legatee comes within the latter part of the 40th section of 3 & 4 W. 4, c. 27. By that act it is enacted, that "*legacies shall not be recovered but within twenty years after a present right to receive the same shall have accrued to some person capable of giving a discharge for the same.*" A case reported in 2 Y. & Coll. p. 200, decided that the word "*legacies*" in the above act included in its meaning residue of a testator's personal estate.

F. A. C.

No. 45.—*Statute of Limitations—Residue under Will (ante, p. 128).*

I am of opinion that the Statute of Limitations, 3 & 4 W. 4, c. 27, would preclude the residuary legatee from suing the executor (*Prior v. Horniblow*, 2 Y. & Coll. 200; *Portlock v. Gardner*, 1 Harc. 594, 604). But in a case (*Adams v. Ba.*, 2 Coll. 290) where more than twenty years had elapsed since the death of the testator, the representative of one of his executors, and the residuary legatee under his will, filed a bill against the co-executor to recover residuary assets of the testator alleged to have been possessed by the co-executor: it was held, that though the plaintiffs were barred by the last-mentioned statute as to assets possessed by the executor more than twenty years before the filing of the bill, they were *not* as to assets possessed by him since that time. ÆQUITAS.

No. 46.—*Stamps—Acknowledgment of Deed (ante, p. 128).*

The memorandum of acknowledgment, in my opinion, as much forms part of the deed as the receipt and attestations. The act requires the memorandum to be indorsed on the deed acknowledged, and without such memorandum the deed is incomplete.

F. A. C.

No. 46.—*Stamps—Acknowledgment of Deed (ante, p. 128).*

In counting a deed for the purpose of ascertaining the amount of progressive duty, the schedules (if any), indorsed receipt, and indorsed attestation are included (Sug. 699), as are also the words and figures of any indorsed or annexed map or plan referred to in the deed; but not of a plan neither indorsed nor annexed, but only referred to (1 Jar. Conv. by S. 726); and as the memorandum of acknowledgment of a deed by a married woman is always referred to, and is actually part of the deed, I think that the example given by your correspondent should be answered in the affirmative.

GEORGE R. ROGERSON.

No. 46.—*Stamp—Acknowledgment of Deed* (*ante*, p. 128).

As a memorandum of acknowledgment indorsed on a deed by a married woman forms part of it, and without it would be invalid, it must be counted, together with every schedule, receipt, or other matter put or indorsed thereon or annexed thereto, in order to ascertain the quantity of folios contained in the deed.

T. D. G.

No. 47.—*Marshalling Assets* (*ante*, p. 128).

Pecuniary legatees are not entitled to have the assets marshalled against the devisees of real estate, either specific or residuary (*Mirehouse v. Scaife*); for to throw the debts upon the devisees in such a case would be to apply devised real estate before personal estate specifically bequeathed. It is clear that if devised lands are resorted to by any creditor having no specific lien thereon, instead of personal estate, the devisee will be entitled to be reimbursed out of personalty specifically bequeathed (see *Jar. on Wills*, p. 601).

GEORGE B. ROGERSON.

No. 47.—*Marshalling Assets* (*ante*, p. 128).

Whether the legacies must abate, or can be charged on the real estate, will, I think, depend on the language of the will. If the testator did not confine the payment of the legacies to his personal estate, then I consider the real estate is a subsidiary fund, to carry out the intention of the testator, that the legacies shall be paid (*Francis v. Clemow*, 23 L. J. N. S. Ch. 288; *Scales v. Collins*, 9 Hare. 656).

F. A. C.

No. 47.—*Marshalling Assets* (*ante*, p. 128).

By the 3. & 4 W. 4, c. 104, it is enacted, that where any person shall die seized of real estate which he shall not by his will have charged with or devised subject to the payment of his debts, the same shall be assets to be administered in courts of equity for the payment of such debts, and that the heirs at law, customary heir or heirs, devisee or devisees, of such debtor, shall be liable to the same suits in equity at the suit of any of the creditors, whether creditors by simple contract or specialty, as they would have been liable to before the passing of that act.

By the same act, c. 106, s. 3, an heir to whom lands are devised by his ancestor, takes such lands as devisee to all purposes, and therefore the pecuniary legatees are not entitled to have the assets marshalled as against him.

It appears to me therefore, after a little consideration, that the creditors are entitled to have the assets marshalled, but not the pecuniary legatees.

J. W.

No. 48.—*Mortgages—Deficiency* (*ante*, p. 129).

At the time the testator M. A. made his will, he was only entitled to an equity of redemption in the properties demised to his sons James and Joseph respectively, and in the absence of any direction by the testator to the contrary, those two properties would have had to have borne the mortgage debt proportionably, according to their respective values, assuming, of course, there was not any personal estate applicable to pay it.

Under, then, the devise of B., James took it, subject to the proportionable part of the mortgage debt of £1000, but under the devise of C. to Joseph, subject to or in trust to pay all the debts of the testator, James became entitled to have his proportion of the mortgage debt discharged out of the trust fund, but he could only claim such exoneration together with and as one of the *cestuis que trust*. Now, in order to enable Joseph to raise funds to satisfy the *cestuis que trust*, the law frees a purchaser or mortgagee from him from seeing to the application of his money, or, in other words, none of the *cestuis que trust* can claim adversely to the purchaser or mortgagee. Hence, the mortgagee F. G. is entitled to all that Joseph took under the will, which was the property C., subject only to a due proportion of the mortgage debt of £1000, and James must share with the other creditors as to the remainder of that debt. GEORGE R. ROGERSON.

No. 48.—*Mortgages—Deficiency* (*ante*, p. 129).

As M. A. mortgaged both estates B. & C. to secure £1000, I should think F. G. was entitled to require that the estate B. should bear a portion of the debt of £1000, if the will did not state that one estate was to bear the whole of the mortgage. C. J.

No. 48.—*Mortgages—Deficiency* (*ante*, p. 129).

F. G. is certainly entitled to require the estate B. to bear part of the mortgage debt of £1000; it being discretionary with a mortgagee whether he will proceed for the recovery of his mortgage debt against the mortgaged land which has come to the devisee of the mortgagor or against the executor (see Williams on Executors, p. 1443, 4th ed.); but in case M. A., the testator, died before the 1st of January, 1855, his son James will have his remedy against his brother Joseph, for the amount of the mortgage debt which may be recovered from him by the mortgagee, unless there are particular circumstances which do not appear in the *quære*. T. D. G.

No. 49.—*Execution of Power—Attestation* (*ante*, p. 129).

It would appear doubtless that in this case there has been a due execution of the power, which, according to the words of the deed creating it, was to be performed "by any deed or deeds to be executed by them in the presence of one or more witness or witnesses." The deed has been executed by each donee of the power respectively, in the presence of one witness at the least, which is all that is required. T. D. G.

No. 51.—*Feme Covert—Acknowledging Deed* (*ante* p. 129).

As the married woman had merely a power of appointment, she could only contract to execute that power; nor could her husband be in any manner implicated by her contracts (Dart's V. & P. 640). It follows that a purchaser with whom she had entered into a contract for sale could not require the concurrence of her husband, nor any other act except the proper execution of the power. CAUSIDICUS.

No. 51.—*Feme Covert—Acknowledging Deed* (*ante*, p. 129).

I think that the purchaser may reasonably require not only the concur-

rence of the husband in his conveyance, but also that the wife should release, and the deed be acknowledged by her; for I assume that this is a *sale* by the husband and wife of the property, subject to the power of appointment, and it may be contended that the power of appointment was vested in the wife as *feme covert*, for the sole purpose of enabling her, if she thought fit, to appoint the property amongst her children, or her own blood, without reference to a sale. This is, perhaps, a novel proposition, yet worthy consideration. The concurrence of the husband is also necessary to covenant for title, &c., inasmuch as the wife cannot, of course, enter into any valid covenant.

F. A. C.

No. 52.—*Reconveyance—To whom to be made (ante, p. 130).*

From the manner in which this Moot Point is stated, I have some hesitation in shaping my answer; but from what I can gather from the statement, I assume that the portion of the real estate which B. had the power of appointing, and did appoint to be sold, is that in mortgage. If that is so, I consider that C. and D., as the appointees of B., now stand in her place, the same as if they had actually been named in the will as trustees, inasmuch as their power is derived through the power of appointment given by the will, and, therefore, I think that C. and D. are entitled to a reconveyance upon the trusts mentioned in the appointment.

F. A. C.

No. 53.—*Settlement—Gift to A. and his Issue (ante, p. 130).*

If there is nothing in the deed of settlement to confine the word "issue" to the first generation, then I think the children and grandchildren of A. are entitled to share equally in the personal estate (see *South v. Searle*, 27 L. T. R. Ch. 118).

F. A. C.

No. 53.—*Settlement—Gift to A. and his Issue (ante p. 130).*

The moot point does not give a very clear conception of the nature of this settlement: but the ultimate limitation does not appear to be so constructed as to entail the property at all. A limitation of personal property to A. and his issue would vest in A. an absolute estate; and in case of his dying intestate, the personal property would belong to his relations, as provided by the Statute of Distribution.

CAUSIDIOUS.

No. 54.—*Mortgage to Several—Joint Account (ante, p. 130).*

I think that the mortgagor can, on the *first* point (if not on the *second*), require the concurrence of the transferee of the deceased mortgagee, for the act of the latter caused a separation of the joint tenancy in the legal estate. As to the second point, it may be very properly contended, that the transfer of the deceased's moiety is *prima facie* evidence of the partnership (if any) or joint tenancy in the mortgage money having been previously separated, which may be done otherwise than by deed. This point is, of course, open to the question whether the mortgagees were *trustees* of the money advanced, which the question does not expressly state.

F. A. C.

No. 56.—*Joint and Several Note—Dividends (ante, p. 131).*

The course I should recommend to be adopted in this case is to demand the money of B. due upon the promissory note, and if not paid, to issue a writ against him under the Bills of Exchange Act. In twelve days after service of the writ, judgment can be obtained (unless he can show a defence upon the merits), and then C. can obtain a charging order at law upon the Chancery dividends to which B. is entitled, upon making a short affidavit of the circumstances. This obtained, C. should then present a petition for a stop order, and for liberty to receive the dividends until the debt be paid.

I know of no more effectual mode than the one I have pointed out, having recently had a somewhat similar case to deal with, and the mode of proceeding adopted by me was similar to the course I have stated.

J. G. B. EDWIN.

No. 57.—*Separate Use without Power to Anticipate—Sale (ante, p. 131).*

I doubt very much whether the purchaser would be safe, or whether he could be compelled to accept this title, for it clearly appears there is a restraint put upon C. D.'s life interest, which, during her coverture, prevents her dealing with it in any way. The rule is so completely established by the courts of equity, that it seems almost superfluous to cite any authority in support of it, but see *Tullett v. Armstrong*, 1 Kee. 428; S. C. 1 Beav. 1; *Hayes' Concise Wills*, 130; *Will. Real Prop.* 182; and the cases there cited.

Assuming, therefore, that C. D. cannot deal with her life interest, it would seem that all that can at present be sold is the children's remainder, but it would only be their equitable interest, for I do not think the trustees could be compelled to join in the conveyance to the purchaser to pass the legal estate while the trust for C. D. continues, and if the trustees did join, I think they would be held responsible for doing that which the courts of equity forbid them, in these cases, from doing.

I do not see that a general release would be of any avail; because the rule against anticipation is so stringently enforced in all cases by the courts, that to hold the release to be good would virtually be to hold the rule against anticipation to be bad, for a general release might be given in every case in which there is a restraint put upon anticipation.

For these reasons I advise the trustees, if they would incur no responsibility, not to join in any conveyance; and I should advise the purchaser, if he desires to act prudently, to take nothing more than the children's equitable remainder.

The youngest child must, of course, attain his majority before he can effectually dispose of his share.

J. G. B. EDWIN

Vendors and Purchasers.

BILL TO IMPEACH LEGAL TITLE.—*Laches—Lapse of time—Notice—Two contracts for sale, the first repudiated, the second followed by a conveyance.*—In 1846 a person sold his interest in a mine to another, and agreed to execute a conveyance when tendered, but subsequently agreed to sell to a third person, and gave notice to the former purchaser that he repudiated that agreement, and refused to execute a conveyance to him, but executed a conveyance to the second purchaser. No possession was taken by either purchaser under the agreement until lately; but the first purchaser paid a rent or royalty in respect of the mine; but no steps were taken until 1857 to impeach the conveyance of the second purchaser. On a bill filed, praying the defendant might be declared trustee under his conveyance for the plaintiff, and might convey the property to him: Held, that after such a lapse of time, and no step taken by the plaintiff to assert his right, the court would not disturb the title of the party having the legal estate: *Semble*, that the court would not have enforced the first agreement against the vendor if the conveyance had not been made. *Alloway v. Brain*, 38 Law Tim. Rep. 100.

SOLICITOR AND CLIENT.—*Purchase by solicitor of client—Under-value—Lapse of time—Acquiescence—Devise of right of claim.*—The Lords Justices have confirmed the decision of V. C. Stuart (with some slight alteration), whereby a purchase of real estate by a solicitor from his client was set aside after upwards of twenty years, on the ground of inadequate consideration and of the embarrassed circumstances and want of independent professional advice of the client. A solicitor who purchases from his client must not only take care that the transaction is perfectly fair, but also that the evidence of its fairness is preserved; for the onus of supporting it is on the solicitor, and he cannot complain that he has lost the means of proving his case by lapse of time. The right to set aside a voidable sale of real estate is not analogous to a right of entry at law, but is an equitable estate which is devisable. *Gresley v. Mousley*, 7 Week. Rep. 427.

GOODWILL.—*Sale of business—Fraud.*—The following case shows the extent of benefit to be obtained by a person purchasing the goodwill of a business: A person having sold all his interest in the business carried on by him under the firm of J. D. and Co., and the goodwill thereof, will be restrained from setting up in business again in the same place under the firm of J. D. and Co., so as fraudulently to represent to the world that the identical business which he has sold is being resumed and carried on by him, although the deed assigning his interest contains no stipulation against his resuming trade in the same place. Goodwill includes all the advantages of established reputation and favour with the public which the business has acquired by being carried on in a particular spot and under a particular name. *Churton v. Douglas*, 7 Week. Rep. 365.

LEASES AND SALES OF SETTLED ESTATES.—19 & 20 V. c.

120 (3 L. C. 105—111)—*Legal estate outstanding*.—A decree was made for the sale under the act of certain settled estates, the legal estate in which was outstanding in a mortgagee, and nominees were appointed pursuant to the statute to execute the deeds of conveyance, all proper parties being ordered to concur and execute. A subsequent order was made, directing that the mortgagee and other parties should be bound by the former order and the sales thereunder, as if they had been parties thereto. A sale took place, and a conveyance was executed to the purchaser by the nominees of the court, subsequently to which the mortgagee reconveyed the legal estate to the trustees of the settled estates: Held, that the legal estate, which was acquired by the settlement, was bound by the order of the court, and passed to the purchaser under his conveyance without the necessity of calling upon the trustees to execute the power of sale given to them by the settlement. *Eyre v. Sanders*, 7 Week. Rep. 366.

SPECIFIC PERFORMANCE.—*Damages—Differences to be settled by arbitrators or their nominee*.—The Court of Chancery will not specifically perform an agreement where any essential particular is left to the decision of two persons named in the agreement, or their nominee, and where no such decision has been given. In such a case damages will not be given; but, *semble*, they might be given where contract was originally such as the court could perform, but had become incapable of specific performance by reason of the expiration of the powers of an act of Parliament necessary for its execution. *Tillett v. Charing Cross Bridge Company*, 7 Week. Rep. 319.

Summary of Decisions.

EQUITY AND CONVEYANCING.

ADMINISTRATION.—*Priority—Liability of administrator*—*Stats. 1 & 2 V. c. 100, and 2 & 3 V. c. 11*.—The question in the following case is a very singular one, arising from the oversight of the Legislature in framing the modern statutes on the subject, it being held that an executor, who, without knowledge or notice of an *unregistered* judgment against his testator, applies the assets in discharge of simple contract debts, cannot be allowed those payments in account as against the judgment creditor (*Fuller v. Redman*, 7 Week. Rep. 430). As this is a point of such importance, we think it desirable to give the judgment of the Master of the Rolls, who said:—"According to the old law, no simple contract debts could be paid, in priority to a judgment debt entered up (by virtue of stat. 17 Car. 2, c. 8, s. 1), whether the existence of the judgment were known or not. There was, in fact, a sort of fiction of law, that everything in the nature of a record must be known to everybody, and, therefore, notice of a judgment was presumed, just as everyone is bound by an act of Parliament, whether he knows of it or not. In order to remedy the hardship of this state of

things, the stat. 4 & 5 W. & M., c. 20, was passed, to the effect (so far as this point is concerned), that no judgment, unless docketed and entered, should have any preference against heirs, executors, or administrators in the administration of assets. The next statute was 1 & 2 V. c. 110. Sec. 19 enacts, that no judgment shall, by virtue of the act, affect any lands as to purchasers, mortgagees, or creditors, unless and until a memorandum to the effects there prescribed shall be left with the senior master of the Court of Common Pleas, which is to be entered in a book. But the act does not go on to use the words of the statute of William and Mary, that the judgment shall not have any preference against heirs, executors, or administrators in the administration of assets. In this state of the law, the old enactment remained untouched, and executors were protected against undocketed judgments; but then followed 2 & 3 V. c. 11, which put an end to docketing altogether. The substance of it is, that after making certain arrangements for existing entries, it puts an end to the possibility of docketing, and destroys the action of the statute of William and Mary, without substituting any new protection for heirs, executors, and administrators. The old law must, therefore, revive just as if the statute of William and Mary had been simply repealed. There is no question as to the old law, for it is clear that it was to remedy the mischief of it that the statute of William and Mary was passed. The old law being thus restored, I have no option, notwithstanding my sympathy for the position of the administrator, but to disallow the sums paid *bonâ fide*, in discharge of simple contract debts. I pass by the question whether there was notice or not. The evidence on this point is very imperfect; but it is unnecessary to discuss it, because I am of opinion that, assuming that the administrator had no notice of the judgment, the law is against him, and I have no power to allow these payments."

ADMINISTRATION.—*Payment of debts.*—Upon the authority of *Dady v. Hartridge* (6 W. R. 384), it has been held that real estate comprised in a residuary gift is applicable to payment of debts, in priority to specifically devised personalty. *Rotherham v. Rotherham*, 7 Week. Rep. 368.

BENEFIT BUILDING SOCIETY.—*Liability for subscriptions*—*Advanced member*—*Redemption of mortgage*—*Termination of computed period necessary to pay off unadvanced members*—*Liabilities to subscriptions after*—*Stat. 6 & 7 W. 4, c. 32, s. 5.*—The following is a case of considerable importance with respect to building societies, which are now so numerous. By the rules of a benefit building society, members were to pay a monthly subscription of 10s. per share, until the objects of the company were accomplished. One of the objects was the formation of a fund from which the shareholders might receive advances, according to a table, in respect of each share subscribed for, and in which table the amount was stated which each shareholder was entitled to receive on each share for thirteen years; and, according to the rules, if he did not elect to receive his advance on his share, he should receive £120; and it was declared by the rules that when the sum of £120 upon each unadvanced share, with all the expenses and

liabilities of the company, should have been fully realised, the society should terminate, and the trustees should deliver up to each shareholder who should have received an advance the title-deeds deposited with them as security, and indorse upon the mortgage a receipt of all money secured thereby pursuant to the 6 & 7 W. 4, c. 32, s. 5, which operates as a reconveyance of the lands mortgaged: Held, first, that a shareholder, who had received his advance, was not discharged from all liability to subscribe at the termination of the thirteen years from the commencement of the society, the funds being inadequate to pay unadvanced shareholders £120 per share, in consequence of losses sustained by the fund and embezzlement of the manager, and that such liability continued until the fund was sufficient to pay such unadvanced shareholders £120 per share: Held, secondly, that an advanced shareholder, who executed a mortgage security for his subscriptions, and redeemed within the thirteen years upon payment of the gross amount of the prospective subscriptions, calculated up to the end of the thirteen years, in accordance with a table appended to the rules, was, notwithstanding such redemption, liable, at the expiration of the thirteen years, to subscribe upon his share until the fund was adequate to pay unadvanced members £120 per share: Held, thirdly, that he was so liable upon his covenant, as well as subject to be proceeded against under the rules, notwithstanding the indorsement upon the mortgage deed, in pursuance of 6 & 7 W. 4, c. 32, s. 5, and the provision of that section, that such indorsement shall operate as a reconveyance of the land mortgaged. *Farmer v. Smith*, 7 Week. Rep. 362.

CHARITY.—*Statute of Limitation* (3 & 4 W. 4, c. 27, ss. 24, 25).—In *Att.-Gen. v. Magdalen Coll.*, 5 W. R. 716, the Lords decided, that where lands were vested in the churchwardens, or the poor of a parish, that the poor were a class of persons within the meaning of sec. 24 of the 3 & 4 W. 4, c. 27, and that the churchwardens might be considered as their trustees. The decision in the above case was acted on by the Lords Justices in the following case, where it was held, that the 24th and 25th sections of 3 & 4 W. 4, c. 27, are applicable to charities, and, after more than a century, an improvident lease will not be set aside on an information by the poor of a parish, or churchwardens suing on their behalf. *Att.-Gen. v. Davey*, 7 Week. Rep. 429.

INJUNCTION.—*Unfair use of title of existing newspaper—Colourable addition to title.*—Plaintiffs were the registered proprietors of the newspaper called *Bell's Life in London*, published weekly at the price of 5d. The defendants were the proprietors and publishers of a new newspaper, which they brought out at the price of 1d., called the *Penny Bell's Life and Sporting News*. It was shown, that from the similarity of the two names, mistakes were likely to occur on the part of the public; that one letter addressed by a person to the office of *Bell's Life in London*, had been delivered at the office of the *Penny Bell's Life* and that inquiries had been made for the penny paper at the office of *Bell's Life in London*. Injunction granted to restrain the defendants from the use of the words *Bell's Life in*

the title of their newspaper. It is not necessary, in order to justify an application for the protection of the court, that a case of fraudulent purpose be made out; it is sufficient if the similarity of title be such as to have led, or to be likely to lead to mistakes. *Clement v. Maddick*, 33 Law Tim. Rep. 117.

LIEN.—*Equitable*—*Notice of equitable lien*—*Specific appropriation of cargo*.—Per Lord Wensleydale:—"In order to create an equitable assignment of a chattel, the obligation must be to deliver a particular chattel, and not to deliver any chattel. Where an equitable lien exists, a notice of such lien must be such as a mercantile man would act upon." Thus, where D. claimed such lien on a cargo, and when the legal title to the cargo was announced to be in H., D. merely said to H.'s clerk, "the cargo is already mine," and D.'s clerk added, "it is a regular swindle," but no former letter or claim of lien was written or made to H.: this notice was insufficient. *Hoare v. Dresser*, 38 Law Tim. Rep. 63.

MARRIED WOMAN.—*Protection order*—*Practice*—*Right to sue separately*.—Where a married woman has obtained a protection order from a magistrate under the Divorce and Matrimonial Causes Act, the court will make an order that she may be sued and answer as a feme sole. It is the ordinary practice in the Record and Writ Clerk's Office to enter an appearance for a married woman without application to the court; and she may obtain a common order at the Rolls for leave to answer as a feme sole, on her statement that she is living separate from her husband. *Rudge v. Weedon*, 7 Week. Rep. 368.

MORTGAGE.—*Payable out of personal estate*.—The 17 & 18 V. c. 113 (1 L. C. 154), provides that the heir or devisee of mortgaged estates shall not be entitled to have the mortgage paid out of the deceased's personal estate, "unless such person shall by his will, &c., have signified any contrary or other intention." A gift of residue was in these terms: "The rest and residue of my real and personal estate, after paying my mortgage and other debts, and funeral expenses, I leave, &c.:" Held, that this brought the mortgage debts within the reservation clause of Locke King's Act, the 17 & 18 V. c. 113, and that they were primarily payable out of the personal residue. *Greated v. Greated*, 7 Week. Rep. 367.

SEA-SHORE.—*Rights of Crown*—*Alluvion*—*Gradual accretions*.—*Quere*, as to the right of the Crown to alluvion, which is not the result of merely natural causes? *Seemle*, gradual and imperceptible accretions which result from the operation of artificial causes, are governed by the rule applicable to such accretion when produced naturally, even when the artificial causes arise from the lawful use of the adjoining land by the owner, who would be the person benefited by the addition, but he must not use his land with such intention. *The Att.-Gen. v. Chambers*, *The Att.-Gen. v. Lewis*, *The Att.-Gen. v. Rees*, 7 Week. Rep. 404.

STATUTE OF LIMITATIONS.—*Legacy charged on land followed by express trust*—*Right to sue*—*Arrears of interest*—3 & 4 W. 4, c. 27, ss. 25, 40, 42.—By sec. 40 of the 3 & 4 W. 4, c. 27, no suit or other proceeding

to recover any legacy shall be brought but within twenty years after a present right to receive the same shall have accrued to some person capable of giving a discharge, or within twenty years after part payment or acknowledgment. The statute has no application where the legacy has become impressed in the hands of trustees with a direct trust in favour of the legatee. In the following case A., by will, bequeathed pecuniary legacies to the plaintiff, and he thereby charged all his freehold estate at X., or Y., or elsewhere, with the payment of the said legacies, and, subject thereto, devised all his real and personal estate to his son B., whom he made his sole executor, and died in 1880. B., by will, devised the said estate at X., another estate at X., and the said estate at Y., to trustees and their heirs, upon trust for his sons as therein mentioned, with powers to let the said estates, and apply the proceeds to the maintenance of his children; and as to the estate at Y. to sell, and in the meantime to apply the rents in payment of the legacies "charged thereon by his late father's will;" and in case the said rents and proceeds of the sale should be insufficient, then to raise such deficiency by mortgage of the estates at X. B. died in 1882. The sole acting trustee under his will sold the estate at Y. in 1883, part paid the legacies in 1884, mortgaged, and ultimately, with the concurrence of the cestuis que trust, sold the estate at X., and died in 1883. Upon a suit against the representatives of the trustee for the unpaid legacies, it was held, upon construction of both wills, that this case was not one of a mere legacy charged on land within the 40th section of the Statute of Limitations, but one of an express trust, for remedy for which was not barred by the statute; and that the legatees were entitled to recover with arrears of interest for the whole period from one year after the death of B. *Watson v. Saul*, 33 L. T. R. 55.

SUCCESSION-DUTY.—16 & 17 V. c. 51—*Construction—General power of appointment.*—The donee of a general power of appointment created by himself in a settlement made in 1817, exercised his power of appointment by will in 1852, and died in 1856: Held, upon the construction of the Succession Duty Act, that the property thus appointed under a general power was not subject to succession duty. Sec. 4 of the Succession Duty Act, is not introduced by way of proviso, or exception, out of sec. 2, but is a distinct and substantive enactment, applying to general powers of appointment. *Re Lovelace's Settlement*, 7 Week. Rep. 401.

TENANT FOR LIFE AND REMAINDERMAN.—*Administration of equities—Interest—Capital—Income paying interest and corpus capital—First payments applied to interest in arrear.*—Where personal estate is given to one absolutely, after a lapse of time, the court, in working out the equities, as between the tenant for life and remainderman of the realty, will control the past administration of the personalty, making the income pay interest and the corpus capital. Where there is a difficulty in getting in personalty, and the realty pays the debts, the owners of the realty become owners of the personalty, and vice versa. Where A. owes B. money, partly interest and partly principal, all money received is for in-

terest and not capital, until all interest is paid. Where a tenant for life of personalty receives the income, and a portion of it, by an accident, suddenly becomes unproductive, he has no right to be recouped the loss out of the corpus. Neither has a remainderman in personalty, if the corpus be lost, a right to come upon the tenant for life for the sum lost in respect of past income received. The receiver's poundage and the costs of passing his accounts are chargeable upon the interest of the tenant for life. *Shore v. Shore*, 7 Week. Rep. 390.

TRUSTEES—*Trustees' Relief Act*—*Paying money into court without inquiry*—*Petition for payment out of court*—*Costs ordered to be paid by trustee*.—Where a trustee neglected to make proper inquiries whether the parties, who, if living, were entitled to a fund, were still in existence, but paid the fund into court under the Trustee Relief Act: Held, that the trustee must pay the costs of the application by the parties entitled to payment of the fund. *Re Knight's Trust*, 33 Law Tim. Rep. 54.

VOLUNTARY BOND.—*Subsequent assignment for value*—*Representations by the obligor*—*Effect of subsequent marriage in importing a valuable consideration into a voluntary bond*.—By matter ex post facto, an obligation, voluntary in its inception, may acquire the character of an obligation given for valuable consideration. Lord Eldon (9 Ves. 193), said: "If a man is indebted, and makes provision for his child by a free voluntary settlement, and that child afterwards marries, the circumstance of its leading to the marriage makes the settlement good as against the creditors; though it would have been bad if no marriage had taken place." In the following case it appeared that a father, in September, 1842, executed a voluntary bond to trustees by way of provision for six of his children. In October, 1843, one of the children (a son) was about to marry, and communications took place between the father and the intended wife's mother. The father informed the lady's mother that he had given a bond to trustees for the benefit of his children. He further added, that the bond could not be altered, but that his son could give a bond, which he trusted would be satisfactory. A copy of the bond was forwarded, and the marriage took place, a settlement having been previously executed in October, 1843, whereby the son assigned his interest in the bond to trustees, upon trust for his intended wife, and the children of the marriage. The father was not a party to the settlement. Under an administration decree, the trustees of the settlement of October, 1843, claimed to be allowed to rank as specialty creditors for value against the estate of the father, the obligor; but the chief clerk treated their claim only as a voluntary debt:—Held, both upon the special circumstances of the representations made by the father, and upon the general principle, that the subsequent marriage imported a valuable consideration into what was first only a voluntary obligation, that the trustees were entitled to rank as specialty creditors for the value against the estate of the obligor. *Payne v. Mortimer*, 32 Law Tim. Rep. 385.

WILL.—*Construction*.—The word "or" in a will may be read as "and" where the context requires it. Where a condition is repugnant to an estate

given by will in the first instance, the gift over is held to be void. A devise to A. and his heirs for ever, and in the event of his dying before having heirs of his body, or making a particular disposition of his property, then over: Held, to be a fee-simple in A., and the gift over void. *Greated v. Greated*, 7 Week. Rep. 367.

EQUITY PRACTICE

BILL.—*Service*—*Order for leave to serve bill on defendant out of jurisdiction*—33rd Order, May, 1845.—The court will make an order for leave to serve bill on a defendant residing out of the jurisdiction, wherever a *prima facie* case is made on a bill, *ex debito justitiæ*, and will not examine into the merits of the case. *McLean v. Dawson*, 32 Law Tim. Rep. 384.

COSTS.—*Set-off.*—A plaintiff fails to pay costs under an order, and process is issued against him, upon which there is no return. The defendant then takes proceedings upon which he fails, and is ordered to pay costs. The defendant then moves to be at liberty to set-off one set of costs against the other. Motion granted on the defendant's undertaking not to levy for more than the balance. *Bryan v. The Metropolitan Saloon Omnibus Co.*, 7 Week. Rep. 423.

PAYMENT OUT OF COURT.—*Widow*—*Affidavit of no settlement.*—Where certain parties are entitled to a fund in court under a will, and one dies leaving a widow his legal personal representative, the court required an affidavit of no settlement before parting with the fund. *Ebrington v Ebrington*, 7 Week. Rep. 403.

PETITION OF RIGHT.—*Attorney-General's consent to bill being filed.*—By consent of the Crown, bill filed against the Attorney-General without making return to commission issued on a petition of right, in reference to the same matter. *In re The Petition of Right of Peter Roll*, 7 Week. Rep. 403.

PRODUCTION OF DOCUMENTS.—*Privilege*—*Correspondence with divorced wife relating to divorce.*—A Scotch divorce was obtained by collusion between the husband and wife, and the wife subsequently executed an appointment of certain settled property. In a suit where the plaintiffs, claiming under the husband, sought to impeach the appointment, as part of the same transaction as the collusive divorce: Held, that the defendant, who claimed under the wife, was bound to produce the correspondence between the wife and her solicitors and agents relating to the divorce, but not that which related exclusively to the appointment. *Forde v. De Pontes*, 7 Week. Rep. 299.

PRODUCTION OF DOCUMENTS.—*Examination in bankruptcy.*—A copy of plaintiff's examination as a witness in bankruptcy, in possession of defendants, who were the assignees in the bankruptcy: Held, not to be a privileged document. *Gandee v. Stansfeld*, 7 Week. Rep. 297.

PUBLIC COMPANY.—*Railway company*—*Investment*—*Costs*—*Apportionment.*—Where several railway companies, having taken lands belonging to the same owner, join in a petition for investment of the purchase money,

the court will apportion the costs amongst such companies, according to the amount of the respective purchase moneys. *Ex parte The Governors of St. Thomas's Hospital*, 7 Week. Rep. 425.

COMMON LAW.

ASSAULT.—*Summons to police court—Dismissal on ground of being of too trifling a nature*—9 G. 4, c. 31, ss. 27, 28—[Key, Crim. Law, 72—74; Princ. C. L. 299].—The following decision and another to the same effect are of great practical importance, not only as to the particular statute, but as bearing on similar provisions in other statutes. Where a magistrate dismisses a complaint for assault and battery on any of the three grounds mentioned in sec. 27 of 9 G. 4, c. 31, he is bound to grant the certificate provided by that section for the protection of the party accused. He may grant it, though neither party be present at the time he grants it. Where both parties had left the court after the hearing of the case, and in their absence, and without notice to them, the magistrate directed the clerk to make out the certificate before the next case was called on, which the clerk did, and a day or two after sent it to the party entitled to it: Held, a sufficient compliance with 9 G. 4, c. 31, s. 27, which directs the magistrate "forthwith to make out the certificate." *Hancock v. Lomes*, 33 Law Tim. Rep. 105.

ASSAULT.—*Summons to police court—Dismissal certificate.*—Where a magistrate dismisses a complaint for assault on any of the grounds mentioned in 9 G. 4, c. 31, s. 27, he is not bound to grant the certificate given by the section immediately, if not asked for. But if he does grant it immediately on being asked for it, though the application for it is not until some days after the hearing, that is a sufficient compliance with the section, which says, "and shall forthwith make out a certificate," &c. *Caster v. Hetherington*, 33 Law Tim. Rep. 105.

ASSAULT AND BATTERY.—*Hostile intention to constitute—Difference between touching to justify giving in charge and bringing action.*—In order to justify one in giving another in charge to a constable, for an assault and battery, it must appear that the party charged had a hostile intention: a touching to attract attention will not suffice, though possibly a civil action might be maintained. B. was superintending, working, and directing the water from an engine on to a house on fire. C., on passing, supposed B. was sending the water in a wrong direction to quench the fire, and in an excited manner told B. so, and took hold of him and turned him round, so as to divert the water. B. thereupon gave C. into custody of a policeman standing there, who saw what passed. In an action by C. against B. for that assault and false imprisonment, B. pleaded son assault demesne, and the judge directed the jury, that to constitute an assault there should be a hostile intention on the part of C. against B. The jury having found that C. took hold of B. merely to call his attention, and without any hostile

attention found a verdict for C.—£10 damages: Held, no misdirection. *Coward v. Baddeley*, 83 Law Tim. Rep. 125.

ATTORNEY AND CLIENT.—*Lessor and lessee—Liability of third party to attorney—Evidence.*—Although ordinarily, notwithstanding that it is understood that the attorney of the lessor or mortgagee, who prepares the lease or mortgage, is to be paid by the lessee or the mortgagor, the latter will not be liable directly to the attorney; slight evidence will suffice to render them so: as, if he receives his instructions directly from the proposed lessee or mortgagor; and this applies, even although the agreement has proved abortive through defect in the title of the lessor, and although in a written agreement for the lease the name of another party is introduced as the proposed lessee, at the desire of the real principal; and any evidence that tends to show who is the real principal, and has really employed the attorney in the particular matter (although the general attorney of the lessor or mortgagee) is admissible. *Smith v. Clegg*, 27 L. J. Ex. 800.

BARRISTER.—*Action by for money had and received for fees against client—Town agent—Authority to bind client.*—Where a barrister receipted his briefs for fees then unpaid, to allow of the costs of a party in a suit being taxed, and the town agent of the client's solicitor in the country said to him, "If you receipt these fees I will see you paid by B.," the client, and B. drew out the money herself: Held, that no action for money had and received lay against the client, who had no notice of the fees being unpaid, and that the town agent could not bind the client by such an agreement, and that there was no privity between the client and town agent, or between the client and counsel. *Hobart v. Butler*, 83 Law Tim. Rep. 62.

BASTARD CHILDREN.—*Contract for maintenance—Consideration—Mother taking charge of and supplying bastard child with such things as should be necessary for its use and benefit.*—By sec. 71 of the 4 & 5 W. 4, c. 76, every bastard child shall have and follow the settlement of its mother until such child shall attain sixteen, or shall acquire a settlement in its own right; and such mother, so long as she shall be unmarried, or a widow, shall be bound to maintain such child as a part of her family until such child shall attain sixteen, and all relief granted to such child, while under the age of sixteen, shall be considered as granted to such mother. In the following case it appeared that the plaintiff, the mother of two bastard children, had, at the request of their father, their care and nurture. The father promises that, in consideration that the plaintiff will continue to take charge of the children, and to supply them with such things as shall be necessary for their use and benefit, he, the father, will pay the sum of £50 a year for a certain term: Held, that there was a good consideration for the father's promise. To a declaration on the above contract in an action to recover some of the money from the father, a plea, that before any part of the money claimed began to accrue or became due or payable one of the children died, is bad. *Smith v. Roche*, 7 Week Rep. 413.

BILL OF SALE [Law Dict. 56—59]—*Attestation—Sufficiency of affi-*

davit.—A bill of sale was executed and attested thus: "Signed, sealed, and delivered, by the above-named A. B., in the presence of Isaac Simpson, clerk to Fredrick L. Lyne, solicitor, 12, Pancras-lane, City." The affidavit filed with the copy of the bill of sale stated that "I, Isaac Simpson, clerk to Fredrick Lewis Lyne, of 12, Pancras-lane, in the city of London, gentleman, make oath and say—1. That the paper writing hereunto annexed, marked A., is a true copy of a bill of sale [describing it]; 2. That I was present, and did see the said A. B. in the said bill of sale mentioned, and whose name is signed thereto, sign, seal, and, as his act and deed, deliver the same.—Isaac Simpson:" Held, that the requirements of the act of Parliament were sufficiently complied with, and that the affidavit was good. *Boublot v. C. Boutell*, 38 Law Tim. Rep. 121.

BOTTOMRY BOND [Law Dict. 67, 68].—*Maritime risk—Construction of bond—What should appear on the face of bond.*—Where an instrument is set up as a bottomry bond in the Court of Admiralty, it must appear on the face of the instrument, either directly or indirectly, that the party who advanced the money intended to do so on maritime risk. In construing such an instrument the court will consider the scope of the whole, and will not be bound by any particular expression. *The Indomitable*, 38 Law Tim. Rep. 127.

CHURCH-RATE.—*Inequality—Poor-rate assessment—Small Tenements Act, 13 & 14 V. c. 99.*—A church-rate opposed, on several grounds, was held to be illegal by reason of its inequality, inasmuch as certain property and persons were omitted, and other property, more particularly a paper-mill, fitted with valuable machinery, was under-rated. Rights of common, connected with possession, are liable to be rated, as also is a towing-path, for the profits derived therefrom, and earned within the parish, although no tolls be taken there. Land must be rated according to the rent it could reasonably be let for, and other property according to the existing value of the subject-matter at the time of rating. The mere fact of the church-rate assessment being made according to the assessment for the poor-rate cannot estop the party sued from a defence founded on omissions or other defects, although such assessment so made has a very strong presumption in its favour. The 13 & 14 V. c. 99, the Small Tenements Act, is not applicable to church-rates. *Brown v. Paine*, 7 Week. Rep. 357.

CONTRACT.—*Goods sold by sample—Warranty—Consumption of part.*—On the sale of an article used in a certain manufacture by a person not the manufacturer or original producer, and who sells it by sample, the purchaser carrying on a particular manufacture in which the article is used, *Semble*, there is no implied warranty that the article is fit to be used in that manufacture, even although the sample was found to be so; and the only undertaking is, that the sample was fairly taken from the bulk; but it is no defence in an action for the price, that a portion of the bulk turned out wholly unfit for the manufacture, for non constat that the bulk generally will be so, or that, even if it is so, the sample was unfairly taken. *Sayers v. The London and Birmingham Flint Glass and Alkali Company*, 27 L. J. Ex. 294.

CONTRACT.—*Implied by circumstances—Supply of gas cut off—Determining contract without notice.*—Where the appellants (a gas company) had supplied the respondent with gas for ten years, receiving payments for the same quarterly, and let him have a meter at a yearly rental, and the respondent had altered his stove in order to use the gas, and in consequence of a dispute between the parties the appellants cut off the gas: Held, that there was no contract binding the company to supply gas for any certain period, and that the surrounding circumstances were not sufficient to establish an implied contract to do so. *Hoddesdon Gas & Coke Company (appellants) v. William Halsewood (respondent)*, 7 Week. Rep. 415.

COPYRIGHT IN DESIGNS ACT.—5 & 6 V. c. 100—*Registration under.*—Held, a sufficient compliance with the terms of the above act to deposit with the registrar of designs one of the articles itself to which the registered design is applied, instead of a copy thereof on paper. The court refused to grant a perpetual injunction to restrain the use of a copyright design except upon the terms of previously putting the plaintiff to the proof of his right at law. *Norton v. Nicholls*, 31 Law Tim. Rep. 282; 6 W. R. 764; explained in S. C. in Q. B. 7 W. R. 420.

COPYRIGHT OF DESIGNS.—*New and original design*—5 & 6 V. c. 100—*Registration of design—Notice not alleging consent to application of design.*—The subject of registration under 5 & 6 V. c. 100, must be a design, and not an article of manufacture; and though old elements in a new combination may form the subject of registration, they must, when combined, form "A new and original design," and not be the component parts of an article of manufacture. It is not a sufficient registration of a design to deposit a copy of the article to which it is intended to be applied with the design upon it, unless it is patent from the inspection of the article what the design is that it is intended to claim, as in the case of paper hanging. Where, therefore, the design claimed consisted in the shape and configuration of a shawl: Held, that a mere deposit of the shawl was not a sufficient registration. It is not a sufficient notice under s. 6 of 5 & 6 V. c. 100, to inform the defendant, a retail dealer, that the plaintiff is proprietor of the design, and that if he sells any article to which the design is applied the plaintiff will take proceedings against him; but the notice ought to state explicitly that the plaintiff had not given his consent to the application of the design. *Norton v. Nicholls*, 7 Week. Rep. 420; explaining the decision of the Q. B. in 6 W. R. 764; 31 L. T. R. 282.

DISTRESS.—*Beasts of the plough—Animals which gain the land—Sheep—Exemption—Cattle of stranger—Statute 51 H. 3, s. 4.*—The 51 H. 3, s. 4, exempting from distress for rent animals which gain the land and sheep, where there are other goods on the premises sufficient to satisfy the distress, applies, although such animals or sheep be not the property of the tenant, and the land is in the occupation of a sub-tenant; sheep were seized as a distress for rent, while there were upon the land a cart-colt, heifers, and steers: Held, that these were not animals that gained the land, and the seizure of the sheep was, therefore, unlawful; and that the measure

of damages in an action for seizing the sheep in contravention of the statute was the value of the sheep. *Keen v. Priest*, 7 Week. Rep. 376

FALSE IMPRISONMENT.—*Liability to action—Making complaint and afterwards signing charge-sheet.*—[3 L. C. 377; 4 L. C. 213].—The defendant was robbed of his watch in a public-house; some time after it was returned to him by the plaintiff, who was barmaid; he had sent for a policeman, who, on hearing his statement, told the plaintiff he should arrest her; she was taken to the station house, when the defendant signed the charge-sheet: Held, that the arrest was not the act of the defendant, so as to render him liable to an action. *Grinham v. Willy*, 33 Law Tim. Rep. 100.

INSOLVENT'S SCHEDULE.—1 & 2 Vic. c. 110, ss. 69, 75—*No statement of debt in schedule—Assignment of share in partnership.*—The Insolventy Act, the 1 & 2 V. c. 110, s. 69, requires the nature and amount of the debts due from the insolvent to be inserted in his schedule, and by sec. 93, where there is an error in the schedule without fraud, the act is to operate upon the actual amount of the debt, but this does not dispense with a statement of the nature of the debt. In the following case it appeared that the plaintiffs and the defendant dissolved partnership by deed, and the defendant assigned to the plaintiff the stock in trade, subject to repurchase by the defendant for £60 at the end of six months; in the meantime the defendant was to remain in possession, and after the six months, in default of payment of £60, the plaintiff might sue for the amount, or take the stock in trade. The defendant became insolvent, and inserted the plaintiff as creditor for certain sums, and also inserted that he was liable to them for one-third of any deficiency of the amounts that might arise from a realization of the effects of the late partnership which he assigned, amounting to £781 19s. 3d. That sum was the exact balance of an account, which contained an item of £60 for the stock in trade, and which had been settled by the plaintiff and the defendant: Held, that the £60 was not described in the defendant's schedule, and that he was, therefore, not discharged from the debt by his discharge under the Insolvent Debtors' Act. *Franklin v. Beesley*, 7 Week. Rep. 294.

INSURANCE.—*Life policy—Recital of—Statement as to party's health and age—Representation—Warranty.*—A policy of insurance under seal, after reciting that the plaintiffs were interested in the life of J., and had delivered to the defendants, an insurance company, a proposal for insurance therein, whereby it was declared that J. was of a certain age and was not subject to certain diseases, and that the defendants had thereupon under taken the proposed assurance, subject to the terms and conditions therein and thereunder expressed, and that the plaintiffs had paid a certain premium, witnessed that the defendants agreed that if J. died within the year, or within any year for which the plaintiff's had paid the premium, the property of the company should be liable to pay the sum insured. The policy contained certain provisoes, and terms and conditions in the usual form were added underneath it. J. was subject to certain diseases, which the plaintiffs in their proposal stated he was not, but the plaintiffs did not

know it until after J.'s death : Held, that the plaintiffs were nevertheless entitled to recover the sum assured, as it was not a condition precedent to their right to have the contract fulfilled that their statement respecting J.'s health should be true. *Wheelton v. Hardisty*, 27 L. J. Q. B. 241.

JUSTICES.—*Action against justices—Excess of jurisdiction.*—By the 11 & 12 V. c. 44, in any action against the magistrate for an act done by him in the execution of his duty within his jurisdiction, there shall be an allegation that such act was done maliciously, and without reasonable and probable cause. In an action against justices for false imprisonment, it was proved that the plaintiff was convicted in £2 penalty and costs, no sum for costs being mentioned. A conviction and warrant of commitment were afterwards drawn up, in which blanks were left for the amount of costs to be inserted. These blanks were filled up by the magistrate's clerk. The plaintiff was then arrested : Held, that there had been no excess, but only an erroneous exercise of jurisdiction, and that the action would not lie. *Bott v. Ackroyd*, 7 Week. Rep. 420.

LIBEL.—*Slander—Privileged communication—Express malice—Evidence—Words spoken after publication of the libel—Pleading—Innuendo—Common Law Procedure Act, 1852, s. 61.*—Under section 61 of the Common Law Procedure Act, 1852, it is not necessary in a declaration for libel or slander that there should be any colloquium; but the plaintiff may set out the words, and put any construction he pleases upon them. Where the libel upon which the action is brought is a privileged communication, it is allowable to give in evidence statements made by the defendant on an occasion subsequent to the publication of the libel, which statements tend to show malice in the defendant towards the plaintiff; but the judge ought to call the attention of the jury to the distance of time which had elapsed before the subsequent statements, and to caution them that those statements might have referred to some other matter, and that they might therefore not be any proof of malice at the time of publication of the libel. *Hemmings v. Gasson*, 27 L. J. Q. B. 252.

MUNICIPAL CORPORATION. — *Mortgage—Money borrowed for other purposes than are authorised for expenditure of borough fund—Covenant—Action—Municipal Corporations Act, 5 & 6 W. 4, c. 6, s. 92; 7 W. 4, and 1 V. c. 78.*—An action is maintainable against a municipal corporation mentioned in the schedule to the Municipal Corporations Act, 5 & 6 W. 4, c. 78, on a covenant contained in a deed under their corporate seal, to repay money borrowed for a purpose to which they are not allowed by the 92nd section to apply the borough fund, and notwithstanding such covenant is contained in a deed by which lands of the corporation are mortgaged by the corporation without the approbation of the Lords Commissioners of the Treasury, which, by the 94th section, is prohibited. *Payne v. The Mayor, &c. of Brecon*, 6 Week. Rep. 801.

NEGLIGENCE.—*Infant of tender years—Negligence of person under whose care he was—Infant's right of action for another's negligence*—[F. Bk. 245; 4 L. C. 232, 233, 269].—The plaintiff, a little boy five years old, went

with his grandmother to a station on the defendant's line of railway, and the grandmother purchased a ticket for herself, and a half-ticket for the child, from A. to B., on the defendants' line. The defendants' servant told her that her train would be up in about a quarter of an hour. She seeing a train coming, mistook it for her train, but it turned out to be a goods train coming at the rate of twelve miles an hour, which did not stop at the station. While she was crossing the line to the opposite side of the platform to be ready for the ordinary train, both she and the child were knocked down by the goods train which did not slacken its speed, and she was killed and the child seriously injured. The jury found that there was negligence on the part of the servants of the defendants, and, also, that the grandmother was guilty of negligence, which contributed to the accident: Held (affirming the judgment of the Court of Queen's Bench), that, as the child was under the care and control of the grandmother, and as her negligence contributed to the injury, the child could not maintain this action for negligence against the railway. *Waitt v. The Great Northern Railway Co.*, 32 Law Tim. Rep. 334.

STATUTE OF LIMITATIONS.—3 & 4 W. 4, c. 27—*Ejectment*—*Twenty years adverse possession*—*Extinguishment of former title*—*Doctrine of remitter*.—The effect, of the Statute of Limitations, 3 & 4 W. 4, c. 27, ss. 2, 34, as to land, is that, after twenty years' possession adverse to a title, it is extinguished, so that it cannot be revived or re-vested by a re-entry after that period, upon the doctrine of remitter; because such an application of that doctrine requires that the former title should be in existence at the time of the re-entry; and the express provision in the statute, that no person shall be deemed in possession of lands merely by reason of an entry thereon, applies to cases of such re-entry. *Brassington v. Llewellyn*, 27 J. Ex. 297.

WAGERING.—*Illegal consideration*—8 & 9 V. c. 109—*Advance of money to pay amount of bets*.—A., having lost money by betting on horse races, applied to B., to whom, amongst others, he was indebted for a loan of £2,000. B. agreed to advance the money on receiving an assignment of certain policies of assurance, A. covenanting to pay the premiums until payment of principal and interest. A., as soon as he got the advance, paid B. what he owed him on his bets. To an action on the deed, A. pleaded that the security was given to secure money lost by betting on horse-racing, and that the deed was a mortgage within the meaning of the acts 9 Anne, c. 14, and 5 & 6 W. 4, c. 41. The learned judge directed the jury that, if the money was advanced in pursuance of a stipulation or agreement between the parties that out of it B. should be paid the money which he had won by betting, this would be a mere colourable loan, but if there was no such agreement, and the money was absolutely placed at the disposal of A., as the lawful owner, then the deed was valid, although B. expected that he would be paid out of the money so lent: Held, that the direction was right. *Fox v. Hill*, 32 Law Tim. Rep. 337.

COMMON LAW PRACTICE.

BILL OF EXCEPTIONS.—*Motion for new trial*—*When motion may be made without waiving exceptions.*—The plaintiff, at the trial, tendered a bill of exceptions to the ruling of the judge, that a certain custom might by law exist, and the jury by their verdict affirmed the existence of the custom : Held, that he might move for a new trial on the ground of there being no sufficient evidence of the custom, without abandoning the bill of exceptions. *The Marquis of Salisbury v. Gladstone*, 7 Week. Rep. 408.

PROBATE AND DIVORCE.

ADMINISTRATION BOND.—*Power of attorney*—*Alteration of condition of bond*—*Alteration of terms of affidavit.*—Where a party entitled to administration is abroad, and has given a simple power of attorney to his agent in England, to take out the administration for his use and benefit, the court will only grant administration to the agent on the same terms as it would have granted it to the party himself. The court, on application, refused to alter the usual conditions of the administration bond and the terms of the ordinary administration oath. *Re Charles Goldsborough*, 7 Week. Rep. 375.

JUDICIAL SEPARATION.—*Cruelty*—*Cruelty to children*—*Prayer for custody*—*Pleading*—*Practice*—20 & 21 V. c. 85, s. 38.—Where cruelty is relied on as the ground of a petition for a judicial separation, &c., some acts constituting legal cruelty should be alleged ; all pleadings should be as short as is consistent with alleging ground for the prayer. The respondent may apply for further specification, if necessary. Acts of cruelty towards children, in the presence of the mother, may be alleged *qua* cruelty towards her, but the court will not receive evidence as to misconduct to children generally in a suit for judicial separation, &c. Until the court is in a position to decree the separation, it has no jurisdiction as to permanent custody of the children. If necessary, the misconduct towards children may be proved after the principal petition in the suit has been heard. *Suggate v. Suggate*, 7 Week. Rep. 296.

JUDICIAL SEPARATION.—*Desertion*—*Custody of children.*—A. deserted his wife, and went to Australia in March, 1854, and in 1858 the wife filed a petition for a judicial separation by reason of desertion ; the husband was personally served, but gave no appearance. The court pronounced for a judicial separation, but refused to make any order for custody of children ; it seems unnecessary, as they were now in the mother's custody, and the father in Australia. *Semble*, when permanent custody of children is intended to be asked for, it should be inserted in the prayer of the petition, or, at least, notice of the intended application should be given to the other party. *Seymour v. Seymour*, 7 Week. Rep. 296.

BANKRUPTCY.

PROOF.—*Debts for goods and money lent*—*Composition*—*Preference as to part of claim.*—A creditor of W., for goods sold and delivered, and also

for money lent, is not entitled to regard them as two separate debts, or to insist upon being paid his cash advances as a condition of his coming in with the other creditors under a composition in respect of his trading account; and where this was done, and the composition fell through, and W. subsequently became bankrupt: Held, that the creditor was not entitled to prove for the balance of his trading account unless he brought into the estate what he had so received in respect of his cash advances. *Ex parte Underwood*, 32 Law Tim. Rep. 395.

PUBLIC COMPANY.—*Joint Stock Company—Contributory—Method of enforcing calls—Practice.*—In enforcing the order of the Bankruptcy Court against a contributory for payment of a call, the practice of the Court of Chancery, under the Winding-up Acts, 1848 and 1849, and the rules in bankruptcy, so far as the same are applicable, must be strictly followed. The proper course, therefore, is to serve the four-day peremptory order to pay under the Winding-up Acts upon the party to be affected thereby, and that not being complied with, the court will sign the warrant for his committal. All orders made by the court for payment of money must be countersigned by the registrar of the court. *Ex parte the Official Liquidator, re the London Unadulterated Food Company, Limited*, 32 Law Tim. Rep. 395.

CRIMINAL LAW.

AVOUTERER.—*Adultery—Larceny—Taking goods of husband with privy of wife.*—A wife cannot be guilty of larceny in simply taking the goods of her husband; if a stranger assist the wife, yet, inasmuch as the wife, if she be the principal, is not guilty of larceny, the other person is not guilty. It appeared that A. and B. took the goods of a husband without his consent, and with the intent to deprive him absolutely of his property in them; but with the consent and privy of the wife. There was no evidence that the wife had committed, or intended to commit, adultery with either of them: Held, that inasmuch as it was not left to the jury to say which was the principal in taking the goods, the wife, or the strangers, it must be considered that the wife took them, and that the strangers assisted, in which case no larceny was committed. *Reg. v. Avery*, 7 Week. Rep. 431.

CLERK TO BOROUGH JUSTICES.—*Municipal Corporation Act, s. 102—Prosecution of offenders committed for trial by borough justices—Clerk of the peace of the county—18 & 19 V. c. 126, s. 18.*—The clerk to the borough justices is interested in the prosecution of offenders committed for trial by the borough justices to the court of quarter sessions for the county, by sharing in the fees paid to the clerk of the peace on the arraignment and trial of such offenders, and is, therefore, liable to an indictment under sec. 102 of 5 & 6 W. 4, c. 76 (so held by Lord Campbell, C. J., and Erle, J., dissentiente Crompton, J.). The clerk to the borough justices is also so interested, notwithstanding that under sec. 18 of 18 & 19 V. c. 156, the Commissioners of the Treasury award and pay to the clerk of the peace

the deficiency between the annual amount of fees received by him since that act, and the annual average of five years' preceding that act. *Regina v. Foe*, 7 Week. Rep. 410

Moot Points.

No. 58.—*Assignment for Benefit of Creditors—Carrying on Business—Partnership by Creditors executing Deed.*

Should the decision of the Court of Exchequer Chamber, in *Hickman v. Cox*, 3 C. B. N. S. 523, be reversed on appeal to the House of Lords? (see *Hickman v. Cox*, 18 C. B. 617). L. S. D. S.

No. 59.—*Set-off—Executor.*

Plaintiff sues as executor for a debt due since the death of his testator; can the defendant set off a debt due from the testator? (*Schofield v. Corbett*, 11 Q. B. 779; *Watts v. Rees*, 9 Exch. 696; *Mardell v. Thelluson*, 21 L. J. Q. B. 410). L. S. D. S.

No. 60.—*Mortgage—Title Deeds.*

Has a mortgagor a right to withhold from the mortgagee in fee the title deeds of the mortgaged lands, if the mortgage was agreed upon, prepared, and executed without any remark having been made respecting them, and if they were not expressly granted by the mortgage deed to the mortgagee (*Davies v. Vernon*, 6 Q. B. 443, 447; *Goode v. Burton*, 11 Jur., Exch., 851). L. S. D. S.

No. 61.—*Stamp—Assignment of Lease—Lease.*

A lease of lands was granted, in 1856, in consideration of payment of rent, and performance of covenants, to A. and B. (copartners) for ninety-nine years absolute, at yearly rent of £13. The lessees covenanted to pay rent, &c., and also to erect buildings on the land, and to expend in so doing not less than £300.

A. and B. afterwards dissolved partnership, and one of the arrangements thereupon was, that the retiring partner should assign and release to the continuing partner all his interest in the lease and demised premises. This was accordingly done by deed poll, reciting such arrangement, and purporting to effectuate the same. What is the proper stamp, a 85s. deed stamp, or a stamp as on an assignment of a lease. If the latter, the following points arise:—The Schedule to 13 & 14 V. c. 97, provides, that an assignment of a lease on any other occasion than a sale or mortgage shall be chargeable with a duty equal to the ad valorem duty with which a similar lease would be chargeable under that act; and that a lease of lands granted in consideration of a sum of money, by way of fine, premium, or grassum paid for the same, with any yearly rent under £20, shall be chargeable with the same duty as for a conveyance on the sale of lands for a sum of

money of the same amount ; and also, that a lease of lands at a yearly rent, *without* any fine, &c., when rent exceeding £10, and not exceeding £15, shall be chargeable with duty of 1s. 6d.

The schedule to 17 & 18 V. c. 83, provides, that a lease of lands for any term of years exceeding thirty-five, at a yearly rent, with or without fine, &c., if term not exceeding 100 years, and rent exceeding £10, and not exceeding £15, shall be chargeable with duty of 9s. ; and if granted in consideration of a fine, &c., as well as rent, then also, in respect of such fine, with ad valorem stamp duty, granted under the head conveyance, in the schedule to the first-named act, but no provision is made as to assignments of leases.

The lease bears a 9s. stamp, being assessed under the act of 17 & 18 V. ; but there being no provision in that act as to *assignments*, it is proposed to impress the assignment with the stamp which a lease, such as the above, would have been chargeable with under the act of 13 & 14 V.—viz., 1s. 6d.

A further question, however, arises, whether the covenant to lay out £300 in building may not be construed as a *fine* or *premium*, and duty be payable in respect thereof, and if so, whether the *lease* is properly stamped.

The rule, that acts imposing a burden on the subject must be strictly construed, should be borne in mind in considering this case. S. J. E.

No. 62.—Will—Codicil—Revocation.

A testator gave all his real and personal estate to A., his heirs, and assigns, but shortly afterwards he duly executed a codicil, and thereby devised a particular farm, which belonged to him before the date of his will, to Z. and his heirs. The testator just prior to his death tore up the codicil *animo revocandi*, and continued seized of the farm up to the time of his death, when his heir claimed to be entitled thereto as undisposed of. Is he entitled to the farm, or is A. ? It was an old will, but suppose it to have been made since the New Will Act, and that the devise was of all the residuary real estate in favour of A. and his heirs, who would be entitled ?

H. W.

No. 63.—Conveyance—Defects in Title.

A. sells lands under special conditions referring to certain supposed defects in his title, which were not occasioned by A. or his ancestors. Would it be necessary or prudent for A. to insist on these special conditions being stated or referred to in the conveyance, or to qualify his covenants with reference to such defects, assume the defect to be a legacy charged on the land or an entail which are not known to have been discharged or duly barred ?

H. W.

No. 64.—Settlement—Stock in Trade.

A trader is about to marry, and he proposes to settle his stock in trade in trust for self and wife during their respective lives with remainder to the children of the marriage. The stock in trade is, of course, subject to fluctuation, and may be totally disposed of in the course of business, whilst

on the other hand fresh stock may be acquired. I should feel obliged if any gentlemen would give me the heads of the provisions of such a settlement, so as to secure the stock in trade for the benefit of the children. I assume that a mere assignment of the present stock in trade upon the trusts of the settlement would not be effectual, and that no trustees could safely accept such a position. I, however, feel a doubt whether in such a case the courts of equity would not compel the settlor to keep up the stock in trade to the value of that originally settled, and I shall be glad to have the views of some correspondents on this, as it is desired to have the settlement as short as is consistent with safety.

W. O. Sr.

No. 65.—*Beneficial Devise Subject to Charge—Statute of Limitations.*

A., being indebted to B. in the sum of £1000 secured by bond, binding A. and his heirs, made his will, and thereby devised all his real estate to Z. and his heirs, "for his and their own absolute use and benefit, but subject to, and charged with, the payment of all his, the testator's, debts." B.'s bond was subsequent to A.'s will, and was dated more than five years prior to the death of A., who never paid any interest, or gave any acknowledgment of the debt, nor has Z. since A.'s death. After the lapse of nineteen years from A.'s death, B. requires payment of the bond debt and interest, and threatens Z. with a suit in equity to compel payment. Can B. recover either his principal or interest, and if so, for how many years' arrears of interest.

O. F. R.

No. 66.—*Marriage—Promise by Married Man—Void or Voidable.*

Is a promise by a married man to marry, after his wife's death, another woman, void or voidable? (see case of *Millward v. Littlewood*, 5 Exch. Rep. 775).

JOHN W. S. LAVENDER.

No. 67.—*Road Commissioners—Liability for Workmen's Acts, &c.*

A workman is employed by certain road commissioners to repair the roads. Is he punishable for putting large side stones on the side of the road so as to force vehicles, &c., on to the broken stones, or are the commissioners? If, as the mooter contends, they are, and A.'s vehicle or himself is, during a dark night, injured through A. pulling to his right side to pass another vehicle, what is the remedy, and against whom? Magistrates having differed on the point, the mooter would be glad of references to "cases" and authorities.

JOHN W. S. LAVENDER.

No. 68.—*Wife pledging Husband's Goods—Pledgee's Remedy, &c.*

By the 39 & 40 Geo. 3, c. 99, s. 8, "Any person knowingly pawning, pledging, exchanging, or unlawfully disposing of, the goods or chattels of any other person, not being authorised by the owner so to do, may be apprehended by a justice's warrant, &c." B., the wife of A., pledged certain articles (not for necessaries, &c.) to C., a licensed pawnbroker. Her husband afterwards sued C. for the value of the goods, on the ground that his wife had pawned them without his consent, and not for necessaries, &c., and the judge of the county court gave judgment in his favour, informing

C. that he had his remedy under the above section. C. has since applied for a warrant.

In Hale 1, and various other authorities, it is laid down, that a wife can never be deemed guilty of stealing the goods of her husband, and that "in all actions brought against a feme covert, while the marriage subsists, the husband must be joined," &c. (Lush, 2nd ed. p. 75).

Can she, then, be punished for pawning the goods, "not being authorised by the owner so to do," and notwithstanding the coverture?

JOHN W. S. LAVENDER.

No. 69.—*Public Concert—Reservation of Seats, &c.*

A. concert was given in the village of W, the admission being free, except that books of the words were sold, and collections afterwards made. In the hand-bills previously issued, and in the programmes, no mention was made that there were any reserved seats. A. and his family attended the concert, and was about to take one of the front seats, but was prevented—being informed that they were "kept." The mover contends that, under the above circumstances, A. was justified in taking any seat he thought proper, especially as he was one of the first in the room. The point being an interesting one, he would be glad of opinions on the subject.

PEN AND INK.

No. 70.—*Younger Brother's Entry.*

Prior to the year 1833, on the death intestate of a person seised of land in fee simple, his youngest son entered upon the land, claiming to be entitled thereto by virtue of a limitation in a deed alleged to have been executed by his grandfather, whereby the land purported to be limited to the father for life, remainder to his youngest son. The youngest son died soon after his entry, and his heirs enjoyed the lands both before and since the 3 & 4 W. 4, c. , but it turns out that the alleged deed was not executed by the grandfather. Can the eldest son (who is still living), recover the lands, or is he not bound either by the doctrine of descent cast, or by the effect of the statute above referred to? In other words, does the doctrine of Littleton, sec. , apply to such a case?

T. S. H.

No. 71.—*Vested and Contingent Remainders.*

In a settlement, real estate is limited thus: in case A. shall be then (i. e. —after the determination of an estate limited to trustees) living, to him for life, and in case B. shall survive A., then to B. for life. Are both or either of these limitations contingent, or are they not vested, or, at least, the last one?

M. J. N.

No. 72.—*Vendor and Purchaser—Conditions of Sale*

Conditions of sale stipulate that all documents not in the vendor's possession, and all copies of such as are in his possession, shall be procured and furnished by and at the expense of the purchaser. The vendor has not in his possession several of the title deeds, but procures such deeds to be produced to the purchaser's solicitor; it, however, appears that he has

no covenant for production, so that it is quite optional with the holder of the deeds to produce them or not. Can the purchaser require such a covenant to be procured by the vendor at the latter's expense, or does the above stipulation cast the burthen on the purchaser. And as the purchaser had no notice of the want of such a covenant, would specific performance be decreed against him, at the instance of the vendor, without his procuring such a covenant?

W. H. S.

No. 73.—Limitation to Children and Substitution of their Issue on Death.

By conveyance, dated 1832, a house was conveyed to A. and his heirs, to the use of B., for life, and after his decease to C. (his wife) for her life, in case she should survive him; and after the death of the survivor of the said B. and C., to the use of the child and children of their bodies (except Z., the eldest), begotten or to be begotten, which should be living at the time of the decease of the survivor of the said B. and C., and the child or children lawfully begotten of any of them that might be then dead, share and share alike as tenants in common, such last-mentioned children to take their parent's share only.

B. is now living, and has six children, all of whom are at this time living and of age, and married. C., the wife of B., is dead. Can B. and his children, who are all of age, make a title to the above house with the consent of the trustee, or have the children of any child who may happen to die before B. an interest which in that event cannot be defeated by their parent's signature?

References to cases will greatly oblige.

J. W.

No. 74.—Public Concert—Reserved Seats.

As a sequel to question No. 69:—If, at a concert, there were three classes of seats—viz., numbered seats, reserved seats, and back seats: A. purchased a ticket for a reserved seat, but did not go to the concert until an hour after its advertised commencement. The reserved seats were all full; in fact, more tickets had been sold than the reserved seats would hold.

On proof of this, can A. recover anything for expenses he may have been put to for cab-hire, &c., beyond a return of the amount paid for his ticket?

E. H.

No. 75.—Industrial Societies—Exemption from Stamp Duty.

By 15 & 16 V. c. 31, s. 2, it is enacted "That the rules of industrial societies shall provide whether or not any loans shall be contracted for the better effecting the purposes of the society, and how such loans shall be secured." By the rules of a society a form of bond is given as security. Does such bond require a stamp? See 15 & 16 V. c. 31, ss. 8, 12, and 18 & 19 V. c. 63, ss. 37, 48.

E. HUGHES.

Answers to Moot Points.

No. 15.—*Admission of A. and Heirs Male (ante, p. 72).*

Assuming the existence of a custom in the manor to entail copyholds, it would seem the words of the admission are sufficient to create in the tenant an estate in tail male general (Jacob's Law Dict. by Tom. tit. Tail, 2, citing 7 Rep. 41; F. Bk. 129), which is accordingly the estate taken by A. under the rule in Shelley's Case (F. Bk. 150; Stal. Cop. 49). But in the absence of a custom to entail, A. would take a conditional fee at common law (Stal. Cop. 45). It is to be observed, that the admission does not prove the custom.

J. W., jun.

No. 16.—*Reservation of Minerals—Inclosure (ante, p. 72).*

The reservation is more clearly expressed here than in the case of *Townley v. Gibson* (2 T. R. 701; 1 Crabb's Real Prop. p. 664). It would, therefore, seem to follow that the allottees do not become entitled to the minerals beneath their several allotments, but that the lord is entitled thereto.

J. W., jun.

No. 20.—*Statute of Limitations—Copyhold (ante, p. 73).*

It is quite clear that B. has, under sec. 2 of the 3 & 4 W. 4, c. 27, acquired a good title as against the heir of A. And although I can find no authority in point, I am of opinion that his title is, under that section, equally good against the lord. Upon the death of A., B., without the shadow of a title, entered into and continued in possession of the land for upwards of twenty years without molestation, thereby acquiring an indefeasible title; because, at the expiration of that period, the right of the lord to enter as for a forfeiture, by reason of the heir of A., the rightful tenant, neglecting to be admitted, was extinguished, as was also his title to the freehold (F. Bk. 164). At the death of A., the usual proclamations should have been made in the lord's court for the heir or other claimant to come in and be admitted, and, on default, the lands seized into the hands of the lord until a tenant appeared and claimed admittance; this proceeding would have put an end to B.'s possession. The admission of A.'s heir (which, it is presumed, he could insist upon at any time within twenty years from the death of his ancestor, except where default after proclamations is a forfeiture), and ejectment brought by him against B., within the twenty years, would also have determined B.'s right. Under no circumstances can the lord compel B. to be admitted.

J. W., jun.

No. 20.—*Statute of Limitations—Copyhold (ante, p. 73).*

As I have not observed any reply to this Moot Point, I beg to offer one.

It appears clear to me that by the Statute of Limitations (3 & 4 Will. 4, c. 27) B. has acquired a good title against both the heir and the lord. The 2nd section says:—"After December 31, 1833, no person shall make an

entry or distress, or bring an action to recover any *land* or *rent*, but within twenty years next after the time at which the right to make such entry or distress, or to bring such action, shall have first accrued to any person through whom he claims," &c. Looking at the definitions of "land" and "rent," I think there cannot be a doubt that the lord has no remedy whatever against B. Now, as B. holds the lands discharged of all rents, suits, and services, his tenure must of necessity be freehold. Copyhold is merely a customary tenure: therefore, when the custom is destroyed, the tenure is also destroyed. Thus, "copyhold or customary tenure may be put an end to by a grant from the lord of the freehold, or of his seignorial rights" (2 Bl. C. by Kerr, 146). Here copyhold is converted into freehold by the lord relinquishing his seignorial rights; why may not the same legal metamorphosis be effected when the lord is deprived of his seignorial rights by statute? And is there any greater difficulty in supposing that the Statute of Limitations can convert a copyhold into a freehold estate, than that the same statute can convert a tenancy at will (such is, in its origin, a copyhold estate [2 Bl. C. by Kerr, 143],) into a fee simple? CAUSIDICUS.

No. 34.—*Stoppage in Transitu—Vendor's power of—Time* (ante, p. 101).

A vendor is not at liberty absolutely to rescind the contract on stoppage in transitu; he has merely a lien on the goods stopped, and can only hold them till paid for by the vendee or assignees (see Lord Kenyon's judgment, in *Hodgson v. Lay*, 7 T. R. 445). The vendor may, after stoppage in transitu, sue the vendee for goods bargained and sold, which he could not do if the contract was absolutely rescinded by such stoppage (*Kymer v. Sn.*, 1 Camp. 109).

F. I. W.

No. 51.—*Feme Covert—Acknowledging Deed* (ante, pp. 129, 142).

It appears from the Moot Point that the *wife alone* has contracted for the sale of the estate over which she has a power of appointment for her own benefit. Now, the object of such a power of appointment evidently was to enable her to deal with the property independently of her husband; and it must, of course, be assumed that it was so constructed as to effect that object; for "An agreement by a *feme covert* for sale of her estate cannot be enforced either at law or in equity unless the estate be settled to her separate use, so as to enable her to dispose of it as if she were sole" (1 Sugd. V. and P. 330, 10th ed.). If, therefore, she could contract to sell the property at all, she must have an absolute power of appointing the fee-simple; and if she has an absolute power of appointing the fee-simple, her husband's concurrence is, as a matter of course, superfluous, and cannot be required. Indeed, so far as I can discover, the whole tenor of the text-books and cases on the subject show that, as I remarked in my previous opinion on the point, a *feme covert* cannot involve her husband in her contracts. As the estate may be passed by a mere appointment, an acknowledgment of the deed, as the mooter very justly observes, would be unnecessary.

I should be glad to know how "F. A. C." surmounts these obstacles, and to see some authorities in support of his "*novel proposition*."

CAUSIDICUS.

No. 52.—*Reconveyance—To whom to be made* (ante, pp. 130, 143).

With all deference to F. A. C., I think he has quite overlooked the main difficulty in this point. His reasoning is doubtless correct; but his premises are not established. He appears to assume that on the death of B., C. takes one part of the property absolutely, and the appointees of B. another part,—in other words, that only a portion of A.'s real estate passes under the first devise; but, on reflection, the impossibility of such a construction will be apparent. It is repugnant to common sense that a man should give his "*real estate*" to one person, and "*the remaining portion of his real estate*" to another. Who could decide what is a man's *real estate* as distinguished from *the remaining portion of his real estate*? The result would be "confusion worse confounded." Now a devise of a man's *real estate* must of course pass the whole of his real estate, unless some specific portion be excepted. If, then, we take it that the first devise (*i. e.*—to B. for life, with remainder to C.) passed the whole of the testator's real estate absolutely, we entirely ignore the words "remaining portion," &c., which would thus be devoid of all meaning whatever. This, however, would be contrary to the maxim of the law, that "*Ex antecedentibus et consequentibus fit optima interpretatio*" (1 Bulstr. 101), and that every part of a document be made to take effect (if possible), and no word but what may operate in some manner (1 P. Wms. 457). I think, therefore, that neither of these constructions will hold good. Having brought the point into this dilemma, it is but right that I should make an attempt to help it out again; and I offer the following solution in the hope that it may accomplish that object, and reconcile the seeming discrepancies of the will.

I think that, on the death of B., C. takes a trust estate in all the testator's real estate, for the purpose of paying the legacies charged thereon, and then for the appointees of B., and that as such trustee he may, subject to the proper formalities of notice, tender, &c., compel the mortgagee to reconvey to *him*, because he may require to sell the whole or part of the property in mortgage, for the purpose of raising money to pay the legacies, and must have all powers necessary for that purpose (Lewin on Trusts, 194, 2nd ed.). He is the only proper party to convey so much of the property as may be sold for the purpose of paying the legacies. The will appears to have been made by some one who had acquired but a very scanty idea of legal matters,—perhaps one of that notorious class of will-mongers, the schoolmasters; and I take it that this enlightened worthy, whoever or whatever he might be, used the term "*remaining portion*" to designate all the real estate which might remain after payment of the legacies by C. As to this *remaining portion*, I think it will now vest in C. and D. jointly, as trustees under the deed of appointment.

CAUSIDICUS.

No. 59.—*Set-off—Executor (ante, p. 162).*

I am of opinion that the debt due from the testator could not be set off against a debt which accrued due after the death of the testator. There is a distinction between the rights of executors as plaintiffs and as defendants; they have a right to pay what debts of the testator they please first. They may also sell his goods, and, as plaintiffs, may sue for the price either personally or as executors. The person so sued would be indebted to them as executors for a cause of action which arose after the death of the testator; and in such an action the defendant could not set off money due to him from the testator, because he might thereby have it in his power to alter the right of the executors to dispose of the assets as they please, and might make them guilty of a devastavit. They may be liable as executors for a contract entered into by their testator, though the testator himself was never liable, as in the case of a bill of exchange given by the testator which did not become due until after his death (see *Blakesley v. Sm.*, 15 L. J. R., N. S., Q. B. 185).

C. F. W.

No. 59.—*Set-off—Executor (ante, p. 162).*

In *Williams on Executors*, p. 1595, it is said, "By stat. 2 G. 2, c. 22, s. 13, where either party sues or is sued as executor or administrator, where there are mutual debts between the testator or intestate and either party, one debt may be set against the other. But in an action by an executor in his own name to recover money due to the testator in his own lifetime and received by the defendant after his death, the defendant cannot set off a debt due to him from the testator." Then in a note there appears the following: "According to the case of *Kilvington v. Stevenson*, cited by *Erskine from Yates' MSS.* in *Tegetmeyer v. Lumley*, the same rule holds, where the plaintiff declares as executor, if the cause of action arose after the death of the testator. This rule does not apply where an executor is defendant (*Blakeley v. Smallwood*, 8 Q. B. 538)."

It therefore seems to me, that the defendant in the present case cannot set off his debt due from the testator, there being a distinction where the executor is plaintiff, and where he is defendant.

T. D. G.

No. 59.—*Set-off—Executor (ante, p. 162).*

The case of *Rees v. Watts* (25 L. J., Rep., N. S., Exch. 80), overruling *Mardall v. Thelluson*, appears to settle this point. It decides that debts of the kind mentioned in the Moot Point are not mutual within the meaning of the stat. 2 G. 2, c. 22, s. 13, which requires that the debt sought to be set off must have arisen between the same parties. I am therefore of opinion that the defendant cannot, in the case put, set off a debt due from the testator.

CAUSIDICUS.

No. 59.—*Set-off—Executor (ante, p. 162).*

This case seems to be exactly the converse of *Mardall v. Thelluson*, 21 L. J. R., N. S., Q. B. 401, where it was decided that where a defendant is sued as executor for a debt which accrued due from testator during his lifetime, he might set off a debt which had accrued due from the

plaintiff to him as executor since the death of testator, and that such debts are mutual and due in the same right within the meaning of 2 G. 2, c. 22. Therefore, I think the defendant in this case may set off the debt due to him from testator.

F. T. W.

No. 59.—*Set-off—Executor* (*ante*, p. 162).

Defendant cannot claim a set-off in this case (*vide* Saunders' Evidence, by Lush, vol. 2, p. 863, and cases cited).

E. HUGHES.

No. 59.—*Set-off—Executor* (*ante*, p. 162).

The difference between the case stated by the mooter and that of *Mardell v. Thelluson* is, that in the latter case the defendant, as executor, was sued for a debt due from the testator in his lifetime, and set off a debt due from the plaintiff to him as executor: whereas, in the case the subject of the Moot Point, the plaintiff is the executor, and sues for a debt due to his testator. The objection in that case was, that the statute of set-off (2 G. 2, c. 22) did not apply for want of mutuality between the parties. That objection was founded on the decision in the case of *Shipman v. Thompson* (3 Willes, 103), but in that case, the plaintiff sued in his own right, and not as executor; therefore there was a want of mutuality between the parties to that action. The second clause of the act referred to provides that, in case of an action by an executor, the other party may set off a debt due from the testator.

F. A. C.

No. 60.—*Mortgage—Title Deeds* (*ante*, p. 162).

The mortgagor, in my opinion, has no right to withhold the title deeds from the mortgagee. A grant of the land to which the deeds relate includes a grant of the title deeds (note in Davidson's *Precedents in Conveyancing*; 1 Dixon on Title Deeds, p. 39; *Roberts v. Wyatt*, 2 Taunt. 268). The remedy for obtaining possession of the deeds would be by a bill in equity, or an action of trover (*Coombe v. Sansome*, 1 D. & R. 201).

F. A. C.

No. 60.—*Mortgage—Title Deeds* (p. 162).

The Moot Point appears to arise thus: it is settled that the right to the estate carries with it the right to the title deeds (*Hooper v. Ramsbottom*, 6 Taunt. 12; *Goode v. Burton*, 1 Exch. Rep. 189; 16 Law J. Rep., N. S., Exch. 309). On the principle laid down in these cases—particularly the latter, which decides that a vendor after conveyance has no lien on the title deeds for unpaid purchase money—it would seem clear that a mortgagee in fee has a right to the possession of the title-deeds by virtue of his possession of the legal estate (*Coote's Law of Mort.* 346, 3rd ed.). However, in the case of *Davies v. Vernon* (6 Q. B. Rep. 443, 447), Lord Denman gave it as his opinion, that if the mortgage-deed does not contain any mention of the title-deeds, and they are not delivered up at the time, the mortgagor has a right to retain them as against the mortgagee, in respect of his equity of redemption. The question then arises, is this decision sound? I cannot discover that it has ever been overruled; but it seems to be the opinion of legal writers that it is not good law, in which opinion I

concur; for I cannot conceive how anything can be clearer than the dictum of Baron Rolfe's dictum in *Goode v. Burton*: "There is no doubt that the title-deeds *prima facie* belong to the owner [of the legal estate]. This is always stated and admitted in all the cases and text-books as clear law." Now, in the case of a mortgage in fee, the mortgagor is not the owner of the estate, but has merely an equity of redemption in it. To answer the question, therefore, in one word, I would say, no. CAUSIDICUS.

No. 60.—*Mortgage—Title-Deeds* (*ante*, p. 162).

As the rule of law is, that a person entitled to the freehold is entitled to the deeds relating to it, a mortgagee may obtain them from the mortgagor, if he has not parted with them. But supposing that the mortgagor has deposited them with a third person as security for money lent, equity will allow such person to retain possession, and might probably restrain the legal mortgagee from bringing an action at law for their recovery, until payment of the money for which they are security (see *Jarman's Conveyancing*, vol. 5, p. 480; *Head v. Egerton*, 3 P. Wms. 280; *Harrington v. Price*, 3 Barn. & Adol. 170, and *Hooper v. Ramsbottom*, 6 Taunt. 12).

T. D. G.

No. 60.—*Mortgage—Title-deeds, &c.* (*ante*, p. 162).

In *Yea v. Field* (2 Durn. & East, 708) it was decided, that unless the title-deeds of an estate are expressly granted, the grantor *retaining any interest in the lands* may lawfully withhold the deeds. I think, therefore, as no mention was made of the title-deeds in the deed of mortgage, the mortgagor might lawfully withhold the deeds in respect of his equity of redemption (*Davis v. Vernon*, 14 L. J. Rep. Q. B., N. S., 30.)

C. F. W.

No. 61.—*Stamp—Assignment of Lease—Lease* (*ante*, p. 162).

I concur with the view of the mooter, that the assignment should be impressed with the stamp chargeable under the act of 13 & 14 V. c. 97. The case of *Nicholls v. Cross* (13 L. J. Ex. 244) decides that a lease containing a covenant on the part of a lessee, to lay out a certain sum of money in building does not require additional stamp duty as being a fine or premium, so that a stamp of 1s. 6d. on the proposed assignment will be sufficient.

T. D. G.

No. 61.—*Stamps—Assignment of Lease* (*ante*, p. 162).

The covenant to expend money in improvements is decidedly not a premium. The duty on a lease not being chargeable under the schedule of the 13 & 14 V. c. 97, the duty on the assignment in question should be 9s. This appears the best way of reconciling the two acts. E. HUGHES.

No. 62.—*Will—Codicil—Revocation* (*ante*, p. 163).

In this case, as the testator destroyed the codicil *animo revocandi*, the will will take effect, and the farm which was devised by the codicil to Z. and his heirs will go along with the other real estate to A., his heirs and assigns. W. W. A.

No. 62.—*Will—Codicil—Revocation (ante, p. 162).*

In my opinion, the heir-at-law has not the colour of a right to the farm, under the circumstances referred to in the Moot Point. The act of revoking the codicil, by tearing it, left the testator's will as it previously stood. There is, in fact, no legal evidence of an alteration of the testator's will, the codicil having been torn up by him. No will or codicil, either previous or since the New Wills Act, could have any operation in the testator's lifetime. At his death, the only instrument operating on his property was the old will.

F. A. C.

No. 62.—*Will—Codicil—Revocation (ante, p. 163)./*

If the will had been made before the New Wills Act, there can be no doubt but that A. would have been entitled to all the testator's property under the original devise, as the rule then was that a will should be revived when the instrument which had previously revoked it was itself revoked. By the New Wills Act, however, this is now altered, but, if there is a residuary devise, A. will still be entitled to the property, as all bequests which do not take effect fall into it instead of going to the heir, as formerly was the case, such devise being of all property undisposed of at the death of the testator.

T. D. G.

No. 62.—*Will—Codicil—Revocation (ante, p. 163).*

A. is not entitled to the farm in consequence of the 22nd section of 1 V. c. 26. The Real Property Commissioners, in their fourth report, p. 34, however, stated, that if (as in this case) an exception were not allowed, any will might be defeated by parol evidence that subsequent wills had been made and destroyed.

E. HUGHES.

No. 65.—*Beneficial Devise subject to Charge—Statute of Limitations (ante, p. 164).*

Twenty-four years having elapsed since the date of the bond given to B., and no interest having been received nor acknowledgment given since that period, B. will now be barred by 3 & 4 W. 4, c. 42, s. 3.

T. D. G.

No. 65.—*Beneficial Devise subject to Charge—Statute of Limitations (ante, p. 164).*

A trust or charge created by will upon real estate for the payment of debts prevents the statute from running (Williams' Exors. p. 1600). B. would, therefore, be entitled in equity to the principal. As to the interest, only six years or any less period due (as a debt) at the death of A.

E. HUGHES.

No. 65.—*Beneficial Devise Subject to Charge—Statute of Limitations (ante, p. 164).*

The five years prior to the death of A. would, I think, be coupled with the nineteen years which have elapsed since his decease. Therefore, unless the bond given to B. is a post obit, he cannot, in my opinion, recover either principal or interest—supposing him not to have been under disability to

enforce his security (3 & 4 W. 4, c. 42). The charge of debts generally does not, in my opinion, help the creditor; but had the will contained a schedule of debts, or this bond debt been specially referred to by the testator, that would have doubtless taken the debt out of the Statute of Limitations.

F. A. C.

No. 66.—*Marriage—Promise by Married Man—Void or Voidable*
(*ante*, p. 164).

There clearly is a diversity of opinion amongst the authorities, as to whether a promise by a married man to marry another woman after his wife's death is illegal or not, and this being so, it behoves us to be careful how we express an opinion.

The view taken by Pollock, C. B., that such a promise is against public policy and bonos mores, is the one to which our better feelings tend to lead us, and seems to be the correct one; but, that a woman should not be able to recover damages incurred on account of the villany of any man, would not be just, and upon this the judgment of the court in *Millward v. Littlewood* (20 L. J. Ex. 2), seems chiefly to depend; and I am inclined to think, that, from the dictum of Pollock, C. B. in the above case, if a married man promised to marry a woman on his present wife's death, and the woman knew at the time that he was married, she could not maintain an action for damages on a breach of that promise.

T. D. G.

No. 66.—*Marriage—Promise by Married Man—Void or Voidable*
(*ante*, p. 164).

It was held, in *Wild v. Harris* (18 L. J. R., N. S., C. P. 297), that a promise by a married man to marry another woman was *not void*, there being at the time of the promise a possibility of its performance, as the defendant's wife might have died within a reasonable time. But in *Millward v. Littlewood* (20 L. J. R., N. S., Exch. 2), Chief Baron Pollock, although differing from all the authorities on the subject, expressed himself against this doctrine.

C. F. W.

No. 66.—*Marriage—Promise by Married Man—Void or Voidable*
(*ante*, p. 164).

There does not appear to be any judicial decision that a promise by a married man to marry another woman *after his wife's death* is void; but I doubt if it is not so from the beginning, as against public policy, and on the ground of uncertainty. In the case of *Millward v. Littlewood* (5 Ex. 775; 20 L. J. Ex. 2), referred to by the mooter, the question did not arise, but Pollock, C. B., in giving his judgment, said, "My brother Jones asks if a man may legally promise to marry a woman after the death of his wife? *I think he may not*; and on that point I differ from the authorities, and agree with his view. I think it is inconsistent with that affection which ought to exist between married persons that a man should, during his wife's lifetime, promise to marry another woman after his wife's death."

In the case cited, as also in *Wild v. Harris* (18 L. J. C. P. 297), although the defendant was a married man, and the court decided that that circumstance did not exempt him from the consequence of his promise, the fact of his being a married man was concealed by him from the plaintiff, who, in

consequence of his promise, had remained unmarried, and thereby suffered an injury, not knowing for some time afterwards that the promiser was a married man.

F. A. C.

No. 67.—*Road Commissioners — Liability for Workmen's Acts, &c.*
(*ante*, p. 164).

In my opinion, A. is not punishable summarily before the magistrates. The practice of placing large stones on turnpike roads, for the purpose stated in the Moot Point, is general, but highly reprehensible, and in my opinion it is high time a stop was put to such acts. A., I apprehend, is employed by the road surveyor, who is the paid servant and agent of the road commissioners, and I think the injured party would succeed in an action against them for damages, by reason of the wrongful act of their servant.

Notice of intention, and cause of action, would have to be given to the commissioners previous to commencement of proceedings. F. A. C.

No. 67.—*Road Commissioners' Liability for Workmen's Acts, &c.*
(*ante*, p. 164).

Both the commissioners and workmen are liable, *vide* Lord Kenyon's opinion in *Stone v. Cartwright* (6 T. R. 411), and it is for the injured party to elect against which of the two he brings his action.

In *Allen v. Hayward* (7 Q. B. (A. & E.) 960), where the commissioners employed a contractor, and, owing to a defect in the materials used in making a drain, the water when turned in broke through and flooded the neighbouring land: it was held, that the contractor was not an agent or servant, for whose misconduct in this respect the commissioners (represented by their clerk), were liable at the suit of the parties injured by the negligent working. But that the misfeasance was one for which, if committed by an agent or servant whose act in this respect was the act of the commissioners, they would have been so liable.

See also *Laugher v. Pointer*, 5 B. & C. 547. As A., the workman, was the direct agent and servant of the commissioners, I think they are clearly liable for an injury arising out of his negligence. J. F. HALTON.

No. 67.—*Road Commissioners, &c.* (*ante*, p. 164).

The commissioners, I think, will be liable in an action for damages, for the injury caused to A.'s vehicle. The servant did not exceed his implied orders in placing the stones on the road, as that is a very usual thing to do, but he neglected to remove them, which he ought to have done, and although masters are not liable for the wilful and deliberate unauthorised acts of their servants, yet they are for their neglect or want of skill (see *M'Manus v. Crickett*, 1 East, 106; *Gregory v. Piper*, 9 B. & C. 591; *Steph. C.* vol. 3, p. 224, 2nd ed.).

T. D. G.

No. 68.—*Wife Pledging Husband's Goods—Pledgee's Remedy, &c.*
(*ante*, p. 164).

I doubt the correctness of the law which appears to have been laid down in this case by the county court judge; and I think, on appeal to a superior court, his decision would be reversed. The wife, whilst residing with her

husband, is to a certain extent his agent, and her acts generally will bind him, and it appears to me to matter not whether B. pledged the articles for necessities or otherwise. If such is the law, as laid down by the county court judge, then the sooner the Legislature has their attention called to it the better, for such a state of things opens the door to a great amount of fraud, for a wife, by collusion with her husband, may pledge articles, and the husband afterwards come forward and swear that she did so without his consent: thus making a profit of crime with little chance of detection.

In my opinion, the wife cannot be proceeded against under the 39 & 40 G. 3, c. 99, s. 8; as to enable the justices to convict, the evidence of the husband would be necessary to disprove his consent to the articles being pledged by her, and which evidence he is precluded from giving.

F. A. C.

No. 69.—*Public Concert—Reservation of Seats, &c. (ante, p. 165).*

The parties who gave the concert had, in my opinion, a right to retain for special use any of the seats, the more especially as the admission was free.

E. HUGHES.

No. 69.—*Public Concert—Reservation of Seats, &c. (ante, p. 166).*

I think that, if it was stated by the handbills or programmes that the admission was to be free, that would operate as a license to A. to take any seat in the room, and would justify him in an action of trespass; but that, there being no *valuable consideration* for granting the license, it would be revocable, at least, at any time before the concert began, and that an agent of the grantor stating certain seats to be *reserved* would be a revocation of the license *pro tanto*, and binding on A.

If A. had purchased a book of the words, *prior* to being informed as to the reserved seats, I think there would be ground for contending that the license was irrevocable, inasmuch as the money paid for the book would be so paid, not for the intrinsic value of the book, but only for its connection with the concert, and in fact partly for the concert itself, so raising a valuable consideration to support the license.

S. J. E.

No. 73.—*Limitation to Children, and Substitution of their Issue on Death (ante, p. 166).*

I should think the parent's signature cannot deprive his issue of the contingent interest to which they may become entitled.

E. HUGHES.

No. 73.—*Limitation to Children, and substitution of their Issue on Death (ante, p. 166).*

I am of opinion that B.'s children cannot make a title to the house during his life.

On the prior decease of any one of them, *leaving children*, the use would shift the estate to them; and, in the event of their surviving B., they would take their parent's share unaffected by any disposition he might have made.

S. J. E.

No. 33.—*Agreement to divide Future Property among Family (ante, 135).*

ERRATUM.—For *nactum* read *pactum*.

Summary of Decisions.

EQUITY AND CONVEYANCING.

ADMINISTRATION.—*Costs—Executor—Action against.*—If an executor administers the estate of his testator and pays over the residue, so that no part can be recovered to answer a subsequent debt of the testator, he will not, as against appropriated legacies, be entitled to the costs of an action brought against him by the creditor, or of a proceeding necessary to establish the debt, or of any suit by him to make the appropriated legacies available for the payment of the debt. *Noble v. Hodges*, 28 Law Journ. Rep. Ch. 322.

APPORTIONMENT.—*Rent—Parol demise from year to year.*—Where a tenancy from year to year has been originally created by the owner of the fee, it is not determined by the death of a tenant for life claiming under the original lessor, and the statute 11 G. 2, c. 19, s. 15, does not, therefore, apply to such a case. Nor does the 4 & 5 W. c. 22, apply to rents reserved by parol. Therefore, where the owner of the fee demised by parol to tenants from year to year, and died, having devised the estates to a tenant for life with remainder over, upon the death of the tenant for life it was held, that the remainderman was entitled to the whole of the rents accruing for the half-year in which he died, without apportionment. So also where the parol demise originated with the tenant for life. *Cattley v. Arnold*, 28 Law Journ. Rep. Ch. 532.

DEVISE.—*Limitation to right heirs of A. by M. his wife for ever—Estate tail.*—A testatrix devised all her real estate to trustees, upon trust for three persons for life, and with remainder to their issue in tail, "and for default of such issue, then upon trust for the right heirs of my grandfather Sir T. S., Bart, deceased, by Mary, his second wife, also deceased, for ever:" Held, affirming the decision of Vice-Chancellor Kindersley, that the ultimate limitations created an estate tail special, and not a fee simple. *Vernon v. Wright*, 28 Law Journ. Rep. Ch. 198.

ESTATE PUR AUTRE VIE.—*Special occupant—No distinction between corporeal and incorporeal hereditaments—Failure of conditional grant, resulting trust.*—Where property is limited to A. and his heirs during the life of B., if A. dies during the life of B., his heir takes not by descent, but as special occupant, and so if the limitation is to A., his executors or administrators, they take as special occupants. There may be a special occupant of an incorporeal hereditament as well as of a corporeal. Where there is an estate pur autre vie, and the grantee limits the property conditionally, so far as it fails, it is in the nature of a resulting trust, but never passes out of the settlor. Where there is a limitation of an estate pur autre vie, in an incorporeal hereditament to one, and his executors and administrators, on his intestacy, his administrator takes as special occupant. *Northern v. Carnegie*, 7 Weck. Rep. 481.

LEGACY.—*Ademption—Satisfaction of debt—Election.*—It was decided nearly a century ago, that where a testator owed a debt, and gave a legacy to his creditor, such legacy must *prima facie* be considered as a satisfaction of the debt. The courts have ever since been endeavouring to escape from this rule by seizing on the slightest circumstances of difference. *V. C. Kindersley* has now decided, that where a testator owes a debt, and gives a legacy to his creditor, if there is the least discrepancy between the debt and the legacy in any respect, the legacy is not a satisfaction of the debt. *Russell v. Hawkins*, 7 Week. Rep. 314.

PUBLIC COMPANY.—*Winding-up—Contributory—Banking company*—7 & 8 Vic. c. 113—*Misrepresentation.*—Illegal or fraudulent conduct by the directors in the management of an association which is legal in its inception and objects, will not deprive the shareholders of their right to obtain contribution by means of a winding-up order. *Re The London and Eastern Banking Corporation (Longworth's case)*, 7 Week. Rep. 483.

RENT-CHARGE.—*Arrears—Deficient rents—Sale of estate.*—Where there is no available remedy for the recovery of the arrears of a rent-charge the plaintiff is entitled to have the premises charged therewith sold (see *Cupit v. Ja.*, 13 Pri. 721). The owner in fee of a small freehold estate granted twenty-two separate rent-charges to several persons and their heirs, each of which was made subject to the others; the whole fell into arrears, and the power of distress and entry could not be enforced. Upon a bill of one of the grantees, on behalf of himself and the other grantees: Held, that the arrears must be raised by a sale of the estate. *White v. James*, 28 Law Journ. Rep. Ch. 179.

SPECIFIC PERFORMANCE.—*Contract by execution of deed—Sale of shares—Recital of payment.*—A recital in a deed of the payment of the purchase-money estops the plaintiff at law, but it is settled that in equity a deed may be contradicted with respect to the payment of purchase-money, and this, even though there be a receipt for the payment of the purchase-money indorsed on the deed, though *prima facie* such an indorsement is binding, and indeed, is what is looked for in equity (F. Bk. 168). A transfer of shares from A. to B. was negotiated through the intervention of third parties. The deed of transfer recited a contract by A. to purchase 105 shares at £5 per share, and acknowledged the receipt of the purchase-money, but no receipt was indorsed. A. executed the transfer with the understanding that B. was purchasing for himself, and that the money was to be paid within a year, the shares being in the meantime deposited as security. B. executed the transfer at the request of C., and upon representation that the money had been paid, and that he, B., would be merely a holder in trust for C. A. was not a party to the representations made by C., and, except by executing the transfer, B. had entered into no contract, and had no authority for the purchase of the shares. The purchase-money was not paid, and upon a bill for specific performance by A.: Held, that the execution of the transfer-deed was equivalent to a contract by B. to purchase the shares, and that notwithstanding the acknowledgment of the

payment of the purchase-money, B. was liable to pay the amount. *Wilson v. Keaton*, 7 Week. Rep. 484.

TRUST.—*Breach of trust—Account—Lapse of time—Waste—Pulling down mansion house—Account of materials—Tenant for life.*—The bill alleged a breach of trust by a deceased tenant for life under a settlement in the application, to the liquidation of a charge on the settled estate of the proceeds of part of such settled estates, while there was in his hands, as personal representative of the settlor, personal estate of such settlor primarily applicable to the liquidation of the charge. The answer of the personal representative of the deceased tenant for life asserted the trust to have been duly and regularly performed by such tenant for life, and as evidence thereof set forth references to the accounts rendered of the settlor's personal estate by his representative, the deceased tenant for life, to the Stamp Office. The plaintiffs did not amend their bill to meet the *prima facie* case thus set up by the defendant: Held, the alleged breach of trust having taken place (if at all) at least thirty years back, that the plaintiffs were not, under the circumstances, entitled to an account of the settlor's personal estate. A tenant for life, without impeachment of waste, pulled down the family mansion house, and built a better mansion in another part of the settled estate, using the old materials. It appeared, that for years prior to 1819, the date of the settlement, the settlor had contemplated the abandonment of the mansion, and the building of another, and that the settlement contained powers of sale and exchange, and also a power to grant building leases of the settled premises, including a site of the old mansion house: Held, that the tenant for life was not liable to an account and inquiry as to the application of the materials of the old mansion house. On appeal from the latter part of the decree, the Lords Justices affirmed the decision, as the tenant for life had neither sold nor applied to his own use any part of the old materials, but had merely enjoyed them in an altered form. *Morris v. Morris*, 28 Law Journ. Rep. Ch. 329.

EQUITY PRACTICE.

ADMINISTRATION SUIT.—*Charges of misconduct against executors and trustees—Defendants serving in their defence—Common administration decree—One set of costs allowed—Conduct of one executor—Inquiry whether the costs should be paid to the other refused.*—An administration bill, filed against two executors and trustees for administration of the real and personal estate of a testator, charged them with improper dealings with the trust estate. One of the executors was in embarrassed circumstances, and had absconded. Under these circumstances, his co-executor and trustee served in his defence. Subsequently the other executor put in an answer. A common decree for administration was made, under which the accounts were taken, and small balances found to be due from the defendants respectively on their several receipts on account of testator's estate. On the order being made on further directions, the court refused to give more

than one set of costs to the defendants, and to enter into an inquiry whether the costs ought not to be paid to the executor who was compelled to sever in his defence, in consequence of his co-executor having absconded. *Course v. Humphrey*, 32 Law Tim. Rep. 329.

ASSIGNMENT.—*Of portion of share—Assignor and assignee—Petition—Service.*—An assignor assigned absolutely a certain part of his then expectant share of property, and a sum of stock was now in court, forming part of the whole share. The assignee presented a petition praying a transfer to him of the sum of stock in satisfaction of his claim: Held, that the assignor must be served with a copy, or have notice of the petition. *Briant v. Dennett*, 33 Law Tim. Rep. 130.

BILL.—*Service of bill on defendant residing out of the jurisdiction—33rd Order May, 1845.*—The order for leave to a plaintiff to serve a copy of his bill upon a defendant residing out of the jurisdiction is entirely within the discretion of the court to grant or to refuse; and although the 33rd Order of the 8th of May, 1845, does not require that any evidence should be adduced by the plaintiff as to the truth and merits of his case, yet it is incumbent on the court to look into the bill and satisfy itself that the case made by the plaintiff is not *prima facie* such an one as would obtain no relief at the hearing. *Semble*, that where the bill presents a mere chance of success, leave for service will be given. *Maclean v. Dawson*, 33 Law Tim. Rep. 158.

COSTS.—*Issue devisavit vel non—Will established in ecclesiastical court.*—Although the heir-at-law has a right to an issue *devisavit vel non*, yet the costs of the issue are in the discretion of the court. Where the validity of a will had been established as to personal estate in ecclesiastical court, and the heir-at-law obtained an issue to try its validity at law, and the verdict was against him, the court, on consideration of all the circumstances, made each party pay his own costs of the issue. *Stacey v. Spratley*, 7 Week. Rep. 486.

COSTS.—*Issue—Heir-at-law.*—In a suit by an heir-at-law to set aside a will of realty, and an issue determined against the heir, the bill was dismissed as to the realty without general costs of suit. *Swinfen v. Swinfen*, 7 Week. Rep. 321.

COSTS.—*Crown [F. Bk. 52; 2 L. C. 122; 4 L. C. 128]—Liability of the Attorney-General to pay costs—Form of order under 18 & 19 V. c. 90.*—The 18 & 19 V. c. 90, which provides for payment of costs by the Crown in unsuccessful suits (see F. Bk. 52; 2 L. C. 122; 4 L. C. 128). In an information filed before the passing of the act 18 & 19 V. c. 90, for enabling the court to give costs against the Crown, the court has no jurisdiction to order the Attorney-General to pay the costs of a successful defendant. But it is otherwise with respect to defendants who have been made parties by amendment since the passing of the act. *Att-Gen. v. Hanmer*, 7 Week. Rep. 483.

DISMISSING BILL.—*Without costs—Resisting plaintiff's claim—Entering into merits.*—Where a defendant resists a plaintiff's demand, and costs are

incurred, he cannot move to dismiss the bill except upon paying the costs, neither will he be allowed to go into the merits on such motion. *Wallis v. Wallis*, 7 Week. Rep. 313.

GAME.—*Reservation of to the landlord—Right of tenant to kill rabbits—His right to employ others to do so*—1 & 2 W. 4, c. 32, ss. 2, 12, 30.—By sec. 2 of the 1 & 2 W. 4, c. 32, "game" is declared to include hares, pheasants, partridges, grouse, heath or moor game, black game, and bustards. By sec. 12, where the landlord has a right to the game in exclusion of the occupier, the occupier shall be liable to a penalty for killing it. By sec. 30, any person committing a trespass in the day-time on any land in search, &c., of game, *coney*s, &c., shall, on conviction, be liable to be fined, &c. He may, however, plead the leave and license, except of the occupier, where the landlord has a right to kill the game by virtue of any reservation, &c. This section makes a distinction between the tenant and persons coming upon the land by his leave and license: and though the latter have no right to kill rabbits, the tenants has, rabbits not being game within sec. 12 of the act. In the following case, it appeared that A. occupied, as tenant to B., a farm, the game upon which was reserved to B. A employed the appellants to kill the rabbits upon the farm, and for so killing them an information was laid against them under sec. 30 of the 1 & 2 W. 4, c. 32, whereupon they were convicted: Held, that as A. had himself a right to kill the rabbits, the appellants were justified under his authority in killing them, and that the conviction was therefore bad. *Spicer v. Barnard*, 33 Law Tim. Rep. 121.

INJUNCTION.—*Trade-marks—Costs.*—If one trader, by using the trade-marks or labels of another trader, provokes a suit for the interference of the court, the defendant, though he withdraws the marks or labels, and consents to a perpetual injunction, will still be liable to the costs of the suit; and if he does not pay them, or refuses to pay them, the plaintiff will be justified in setting down the cause, and bringing it on for hearing. *Burgess v. Hill*, 28 Law Journ. Rep. Ch. 356.

INTERROGATORIES AND COPY OF THE BILL.—*Service out of the jurisdiction at same time.*—The plaintiff, when he requires a defendant to answer the bill, must, within eight days after the defendant's time for appearing has expired, file interrogatories for his examination, and deliver, within a further limited time, a copy thereof to the defendant (3 L. C. 390; F. Bk. 284, 285). The only object, it would seem, of this regulation is, that interrogatories shall not be filed or delivered later than the specified periods, and, therefore, Vice-Chancellor Kindersley has held that where a party is residing out of the jurisdiction, and it is an object to save time, such party may (by leave, *quære*) be served with interrogatories and a copy of the bill at the same time. *Leaman v. Brown*, 7 Week. Rep. 322.

JURY, TRIAL BY.—*Infringement of patent*—21 & 22 V. c. 27—*Trial at law.*—The 21 & 22 V. c. 27, provides for a jury being summoned before the equity judges when in any suit a question of fact is raised. The action in a suit for the infringement of a patent being an action to determine

a legal right to which the suit is ancillary, and not to try a question of fact arising in the suit, is not a case within 21 & 22 V. c. 27, in which this court will summon a jury to try the question before itself. *Griffiths v. Turner*, 7 Week. Rep. 322.

LEASES AND SETTLED ESTATES ACT.—19 & 20 V. c. 120—*Model lease acted on.*—Where, under the above act, trustees had obtained leave of the court to grant building leases, and a model lease had been prepared and carried into the chief clerk's office, the court allowed this lease, when settled, to be taken as a precedent for all the other leases, without applying in chambers in each particular case. *Re Hemingway*, 33 Law Tim. Rep. 103.

LEGACY.—*Expenses of investment—Costs of suit to secure—Trustee Relief Act, 1847.*—Testator gave his real and personal estates to trustees upon trust for sale and conversion, and to stand possessed of the proceeds, upon trust, among other things, to set apart and appropriate a sum of £10,000 for the benefit of the plaintiffs, and made one of the trustees his residuary legatee. The plaintiffs requested the trustee to pay the money into court under the Trustee Relief Act of 1847. The trustee declined, saying that they had invested the money as directed by the will, and did not wish to relinquish the trust. The plaintiff then filed a bill for the payment into court of the sum of £10,000. The trustees, by their answer, said that the suit was unnecessary and improper, but admitted at the bar that the plaintiff had a right to have the legacy brought into court: Held, upon the language of the will, and upon established principles of equity, that the expenses of serving, appropriating, and securing the legacy must be borne by the residuary legatee: Held, also, that the costs of the legatees, who had been forced by the conduct of the defendants to bring a suit for the recovery of their legacy, which might have been paid in by the trustees under the Relief Act of 1847, must also be borne by the residuary estate. *Handley v. Davies*, 32 Law Tim Rep. 330.

PAWNBROKERS' ACT.—39 & 40 G. 3, c. 99—*Who may inform.*—Any one may inform or prosecute for offences committed against the Pawnbrokers' Act, except those persons mentioned in the 29th section of the act. *Caswell v. Morgan*, 33 Law Tim. Rep. 120.

PRODUCTION OF DOCUMENTS.—*Copies of examination of plaintiff and other witnesses before Commissioner in Bankruptcy—Evidence in support of defendant's case—Privilege.*—Copies of depositions of the plaintiff and other persons before the Commissioner in Bankruptcy, in the possession of the defendant, the assignees of the bankrupt, are not privileged, because they may be evidence in support of defendant's case. *Gander v. Stansfeld*, 32 Law Tim. Rep. 330.

PRODUCTION OF DOCUMENTS.—*Statement of contents of document, in answer—Claim of privilege.*—Where a defendant, by his answer, stated the effect of a deed, though he afterwards claimed privilege from production in respect of it, as being one of the muniments of his title: Held, that he was bound to produce it in order to verify the averment of its contents.

In a suit by a mortgagee of property against a subsequent purchaser, claiming property in respect of his mortgage, and payment or a decree of foreclosure, the defendant, by his answer, claimed to be a purchaser for value, with notice, and set out in his schedule the title-deeds, but claimed privilege from production on the ground that they were the muniments of his title, and that he was advised that the plaintiff had no right to production of, nor interest in, the documents: Held, that a good ground of privilege was sufficiently made by the answer, and that the defendant was not bound to produce them. *Hunt v. Elmes*, 33 Law Tim. Rep. 129.

PUBLIC COMPANY.—*Contributory*—*Service of order to pay call*—*Form of affidavit*—*Fieri facias*.—An affidavit of personal service of an order for payment of a call is not irregular for omitting to state the place of service. *Re Natle Vale Slate Company*, 7 Week. Rep. 319.

PUBLIC COMPANY.—*Costs, security for*—*Limited companies*—20 & 21 Vic. c. 14, s. 24.—By the 20 & 21 Vic. c. 14, s. 24, where a limited company is plaintiff or pursuer in any action, suit, or other legal proceeding, any judge, having jurisdiction in the matter, may, if it be proved to his satisfaction that there is reason to believe that if the defendant be successful in his defence, the assets of the company will be insufficient to pay his costs, require sufficient security to be given for such costs, and may stay all proceedings until such security be given. The court will not require from a limited company security to be given for costs at the instance of a defendant who alleges that the plaintiffs are insolvent, since the solvency or insolvency of the plaintiffs can only be ascertained on the accounts being taken. *Cailand Patent Tanning Company (Limited) v. Cailand*, 28 Law Journ. Rep. Ch. 357.

WEIGHTS AND MEASURES.—5 & 6 W. 4, c. 63—*Stamping by inspectors*—*Jurisdiction*.—The 5 & 6 W. 4, c. 63, s. 25, enacts, "That any inspector, knowingly stamping any weights or measures of any person residing within the limits of any local jurisdiction for which another inspector may have been legally appointed," shall forfeit a sum not exceeding 20s. for every weight so stamped: Held, that such prohibition applies to all inspectors of weights and measures, whether appointed by the authorities of a city, or by the county justices, and forbids each of them from stamping weights or measures of persons residing within a district for which another inspector had been legally appointed. *Reg. v. Skelton*, 33 Law Tim. Rep. 120.

COMMON LAW.

AFFIDAVIT.—*Erasure in jurat of affidavit verifying notarial certificate*—*Rules, Hilary, 1853, pl. 140*.—An affidavit verifying a notarial certificate of an acknowledgment by a married woman, taken abroad, is not within the 140th rule of the Practice Rules of Hilary Term, 1853, which orders that "no affidavit shall be read or made use of in any matter depending in court in the jurat of which there shall be an erasure:" therefore, the court admitted an affidavit verifying a notarial certificate made abroad, where the jurat contained an erasure. *Re Denton*, 33 Law Tim. Rep. 136.

BILL OF EXCHANGE.—*Equity attaching to—Discharge by sale of goods deposited as collateral security.*—It is a well-established rule, that a party who takes an overdue bill takes it subject to all the equities with which it is encumbered in the hands of the party from whom he received it; and the following decision furnishes an illustration of this rule. On the making of a bill of exchange, it was agreed between the drawer and the acceptor, that the latter should deposit with the drawer some canvas as a collateral security for the payment of the bill, with power to the drawer to sell the canvas and apply the proceeds in discharge of the bill, if it was not paid at maturity: Held, that this agreement created an equity attaching to the bill in the hands of a party to whom the bill was indorsed when it was overdue; and, that, as the drawer after the indorsement had sold the canvas and retained the proceeds, the indorsee was debarred from recovering on the bill for so much as the canvas realised on the sale. *Holmes v. Kidd*, 28 Law Journ. Rep. Ex. 112.

BILLS OF SALE.—*Effect of one fraudulent assignment on a subsequent bonâ fide sale—Description of assignor in affidavit of registration—"Gentleman."*—A. made a fraudulent bill of sale of goods to B., who subsequently, in the presence and with the sanction of A., but without his being a party to it, assigned to C., bonâ fide, and for a valuable consideration. The actual-possession of the goods throughout remained in A.: Held, that the second bill of sale was not affected by the fraud in the first, and; therefore, C.'s assignment was protected against the creditors of A. In the bill of sale and affidavit of registration under the statute 17 & 18 V. c. 36, A. was described as "gentleman." It appeared that he had been formerly a coal agent, but, having been dismissed, he was at the time of the bill of sale out of employment: Held, that there was no such misdescription as affected the validity of the bill of sale. *Morewood v. The South Yorkshire Railway and River Deen Co.*, 28 Law Journ. Rep. Ex. 114.

CONTRACT.—*Sale of goods—Warranty.*—A statement at the time of a sale of goods may be a warranty, but it by no means is necessarily so. A declaration alleged that defendant, by warranting sixty-six quarters of barley to be seed barley, sold the same to the plaintiff, whereas they were not seed barley. It appeared on the trial that defendant had received a sample of barley: plaintiff being informed thereof, went to defendant and said, "I understand you have some good seed barley;" defendant replied, "yes, I would not sell it to you unless it was:" Held, that this did not amount to a warranty. *Curtis v. Crick*, 33 Law Tim. Rep. 166.

COVENANT.—*Recitals in a deed—Operation as a covenant.*—A recital in a deed may amount to a covenant. Where a deed recited that an action having been brought by A. against B., it was agreed that final judgment should be signed, but that no execution should be issued until the security therein contained should be realised; and the deed then went on to give security for the debt: Held, that this recital amounted to a covenant not to issue execution, upon which an action would lie. *Farrall v. Hilditch*, 7 Week. Rep. 409.

GOODS SOLD.—*Sale of goods in excess of order.*—Where a contract is entered into for certain specified articles to be delivered to the defendant, the plaintiff must prove that he delivered those goods to the defendant, and an allegation of delivery would not be proved by evidence of the plaintiff having sent the goods ordered in a crate with various other things not purchased by the defendant. In the following case, it appeared that the defendant, a shopkeeper at Peterborough, ordered of the Plaintiffs, dealers at Bristol, specified quantities of particular kinds of crockery. The plaintiffs sent to the defendant a crate containing the goods ordered, and other goods not ordered, and in one invoice debited the defendant with the whole of the contents of the crate. The defendant having rejected all the goods: Held, in an action for goods sold and delivered, that the plaintiffs must be non-suited, as, to sustain an action for 'not accepting, an unconditional tender of the goods ordered must be proved, and the plaintiffs were not entitled to impose upon the defendant the risk and difficulty of selecting the goods ordered from the excess. *Levy v. Green*, 7 Week. Rep. 487.

JUDGMENT CREDITORS' REMEDIES.—*Stock—Charging order*—1 & 2 V. c. 110, s. 14.—The 14th section of 1 & 2 V. c. 110, enacts, "That if any person against whom any judgment shall have been entered shall have any Government stock, funds, or annuities standing in his name in his own right, or in the name of any person in trust for him, it shall be lawful for a judge of one of the superior courts, on the application of any judgment creditor, to order that such stock, &c., shall stand charged with the payment of the amount for which the judgment shall been so recovered." In the following case, it appeared that A. was possessed of a Government annuity on her own life, and another on the life of B. She died, leaving B., executor and sole legatee. There were then some arrears due on the annuity on the life of A.: Held, that neither the arrears nor the annuity could be attached by a judgment creditor of B. under the 1 & 2 V. c. 100, s. 14. *Taylor v. Turnbull*, 33 Law Tim. Rep. 152.

LANDLORD AND TENANT.—*Covenant to insure—Pay rent, &c.—Breach—Forfeiture—Waiver—Ejectment.*—An ejectment was brought for breach of covenant in not insuring, and for non-payment of rent, there being no sufficient distress, as it was alleged, upon the premises. The landlord caused a search down stairs, and finding nothing there, did not trouble to look up stairs for goods to countervail the arrears of rent: Held, that such search was insufficient. The defendant had been required to insure, and produce his policy and receipts several times—the last time about six months before the action; he was asked if he had insured, when he replied that he had not, as he had not the money to do it. The landlord subsequently received rent of an under-tenant: Held, that this was evidence for the jury that the defendant had not insured according to his covenant, and that the landlord afterwards receiving rent from an under-tenant was no waiver of the breach of covenant to insure. *Price v. Worwood*, 33 Law Tim. Rep. 149.

LIBEL.—*Affidavit made in the course of a judicial proceeding reflecting*

upon one not a party to the cause [Com. L. Princ. 343]—*Malice—Action.*—The following decision settles the point affirmatively which is stated doubtfully in Com. L. Princ. p. 343, citing *Lewis v. Sm.*, 3 L. C. 190, and *Henderson v. R.*, 31 L. T. 368. No action lies for defamatory words written or spoken, in giving evidence in a judicial proceeding, and it is so although it is a stranger to the cause who seeks damages for matter in such manner falsely and maliciously spoken or written of him, and whether the matter be relevant or not. The defendant, in support of a summons for particulars of goods sought to recover from her in an action by W., made an affidavit reflecting upon the present plaintiff. At the trial of the present action, for alleged libel contained in that affidavit, it was proposed to give evidence for the plaintiff for the purpose of establishing his cause of action, that the matter contained in the affidavit was false within the knowledge of the defendant; but the judge directed the jury that such evidence was inadmissible for that purpose, and that such matter was not a legal subject matter of this action: Held, that the direction was right. *Henderson v. Broomhead*, 7 Week. Rep. 492.

MORTGAGE.—*Tenancy from year to year—Power to distrain—Notice to quit.*—The following decision is one of some practical importance as to the form of a mortgage-deed where there is a clause of attornment with a view to a distress. A mortgage-deed provide that "the mortgagees should have for the recovery of the principal and interest thereby secured, the same powers of entry and distress as are by law given to landlords for the recovery of rent in arrear, and the mortgagor did thereby attorn and become tenant from year to year to the mortgagees" of the premises thereby assigned, provided that, in the event of any sale under the power given by the deed, the tenancy and attornment thereby created should, as regarded the premises so sold, be at an end without any previous notice to quit: Held, that the clause did not create a tenancy from year to year, with all its incidents, so as to entitle the mortgagor to six month's notice to quit; but the tenancy was created only to give the mortgagees a right to distrain. *Metropolitan Counties and Gen. Life Insurance Company v. Brown*, 33 Law Tim. Rep. 165.

MORTGAGE.—*Tenancy between mortgagor and mortgagee—Power of Distress—Licence—Creation of tenancy.*—The following decision depends upon the two principles, that a person cannot justify a distress as a landlord for arrears of rent accrued before the assignment by him of his reversion, and that a mere license by a party in possession of lands to seize chattels as a distress in the name of rent but in reality for interest on a mortgage, cannot be transferred. A. and B. were first and second mortgagees respectively. A. transferred his mortgage to B., together with all the interest in arrear, and all his rights under the mortgage-deed, and gave him a power of attorney to sue and recover in his (A.'s) name. A.'s mortgage-deed contained a proviso whereby the mortgagor, for the more easy recovery of the interest, gave to the mortgagees the same power of distress as by law landlords have for the recovery of rent, and attorned and became tenant

from year to year to the mortgagee of the mortgaged premises at a rent of the same amount as the interest: Held, that this was not a mere license to seize and sell, but that a tenancy was thereby created, and that the mortgagee having assigned away his interest, the power of distress in respect of prior arrears, was gone: Held, also, that even if this could be construed as a mere license, it would last no longer than a tenancy would have done, and that it was therefore equally at an end. Semble, also, that if the license were not at an end, it is one which could be exercised by A. personally only, and that the transaction between A. and B. amounted to a transfer of the license, and was therefore void. *Brown v. The Metropolitan Counties Life Assurance Society*, 7 Week. Rep. 477.

NOTICE OF ACTION.—*When necessary—Pleading—Action for a matter done in pursuance of statute.*—An action for a claim arising on a contract is not within the meaning of a statute providing for a notice of action for anything done in pursuance of the statute. The Incorporation Act of the Great Western Railway enacts, that no action shall be brought for anything done in pursuance of the act, without previous notice to the intended defendant. In an action against the company for money had and received, and on accounts stated, issue was joined upon the plea that the cause of action accrued after the act came into operation, and that no notice was given, pursuant to the statute: Held, after verdict for the company upon this issue, that the plea was bad for not showing by averment that notice was required, and that the action was brought for a matter done or in pursuance of the act; and that judgment must be reversed. *Garton v. The Great Western Railway Company*, 7 Week. Rep. 478.

PENALTY OR LIQUIDATED DAMAGES.—8 § 9 W. 3, c. 11, s. 8—*Agreement for sale of business, stock in trade, &c.*—By an agreement for the sale and the purchase of a public-house, the household furniture, fixtures, stock in trade, and effects in and upon the premises were to be taken at valuation in the usual way by persons named, the goods to be valued, and possession given, on or before a day named; and in the event of either party not complying with every particular in that agreement, to forfeit and pay £50, and expenses attending the same: Held, to be a penalty, and not liquidated damages. *Betts v. Burch*, 33 Law Tim. Rep. 151.

POWER.—*Lease—Necessary and usual clauses in mining lease.*—A power was reserved in a deed of settlement to a tenant for life, to lease collieries and coal-mines, “together with all such powers, authorities, accommodations, liberties, and privileges as shall be necessary or are usually contained in leases of collieries or mines in the county, place, or neighbourhood, where the collieries or mines are situate, for seeking, winning, working, drawing, taking, and carrying away the coals within and under the same.” The lessees were not, except in the cases provided for, to be made punishable for waste by any express words. A mining lease granted in pursuance of this power authorised the lessee to build and erect all such engines, &c., workmen’s cottages, &c., as should be necessary and proper for the carrying out the works, and also to dig and take building materials for buildings

required for the purposes of the colliery. The lessee built several cottages for workmen. It was found by the jury, that the power to build cottages in places convenient to the works of the mine was a necessary and usual power in mining leases: Held, that the lease was valid. *Morris v. The Rhydydefed Colliery Co.*, 28 Law Journ. Rep. Ex. 119.

SHIPPING.—*Merchant Shipping Act, 1854 (17 & 18 V. c. 104)*—*Register of ships*—*Effect of registration in owner's name after mortgage*—*Name of ship*.—The owner of an unfinished ship mortgaged it, and on completion of the vessel, caused it to be registered in his name as owner under the Merchant Shipping Act, 1854. On the following day the mortgagee registered the mortgage. The owner having subsequently become bankrupt: Held, that although there was no mortgage subsequent to the registration by the owner, the possession of the vessel was not in the assignees, but in the mortgagee. The name of the vessel was the "City of Bruxelles," and was so described in the mortgage. It was registered by the owner and by the mortgagee as the "City of Brussels." Held, that the misdescription did not vitiate or affect the validity of the registration. *Bell v. The Bank of London*, 28 Law Journ. Rep. Ex. 116.

TROVER [Com. Law Pract. 217—243].—*Conversion*—*Delivery of goods to vendee*.—In the case of a sale of unascertained goods, until both the parties to the contract have assented to the appropriation of some particular goods to satisfy the contract, the property in the goods does not pass (*Dixon v. Yates*, 5 B. & Ad. 313; *Godts v. Rose*, 25 L. J. C. P. 61). Where there was an agreement between the plaintiff and C. for the sale by C. to the plaintiff of all the oil produced from the whole crop of peppermint grown on his farm in the year 1858, C., after having had the oil weighed according to contract, and put into the bottles which the plaintiff had sent to him for that purpose, sold it to the defendant: Held, that the bottles having been sent by the plaintiff, and filled by C., or his agent, the property in the oil had passed to the plaintiff, and that he could maintain an action of trover against the defendant. *Langton v. Higgins*, 7 Week. Rep. 489.

COMMON LAW PRACTICE.

APPEAL.—*On motion for nonsuit* [Com. L. Pract. 208—210].—*Trial before the sheriff*.—The C. L. P. Act, 1854, which gives an appeal "in all cases of rules to enter a nonsuit upon a point reserved," applies to actions tried by the sheriff under a writ of trial *Levey v. Green*, 7 Week. Rep. 487.

ARBITRATION.—*Agreement to refer*—*Application to stay action brought after*—C. L. P. Act, 1854, s. 11.—Where several persons agree to refer matters in dispute to an arbitrator, and that a formal submission shall be drawn up to be signed by themselves and another party, and that party refuses to sign, the court will not stay an action commenced by one of the parties to the agreement against another, the agreement which was come to for a formal submission not being within the section, and the formal submission not having been executed: *Semble*, that the above section is not

confined to the case of a deed or instrument in writing in which there is a stipulation of the parties to it to refer differences, as held by the Queen's Bench in *Blythe v. Lafane*, 5 Jur. N. S. 364. *Mason v. Hadden*, 33 Law Tim. Rep. 163.

ATTORNEY'S LETTER.—*Costs of letter prior to action cannot be insisted on if debt paid before writ issued.*—The following case confirms previous decisions, that an attorney cannot insist on his charge for "letter before action" where the defendant tenders the debt before the writ is issued, the Common Pleas having held that an attorney's letter claiming payment of a debt due to his client, with the costs of the letter, does not prevent the tender of the debt without any costs. And if, after such tender, the attorney issues a writ for the debt, the court will set it aside with costs. *Holmar v. Stevens*, 33 Law Tim. Rep. 148.

EXECUTION.—*Fieri facias*—19 & 20 V. c. 97, s. 1—*Retrospective effect.*—By the 19 & 20 V. c. 97, s. 1, no writ of execution shall prejudice the title to such goods acquired by any person bona fide, and for a valuable consideration, before actual seizure, if the purchaser had not notice of such writ being in the hands of the sheriff. In the following case it appeared that a fi. fa. against S., at the suit of the defendant, was delivered to the sheriff of G. in May, 1856. The plaintiff knew of the writ, but not of the amount. On the 29th July, 1858, the Act (Mercantile Law Amendment), 19 & 20 V. c. 97, passed. In August, the plaintiff purchased from S. some steers, which the latter had bought in June. In December the steers were seized under the fi. fa. against S. at the suit of the defendant: Held (affirming the decision of the Court of Exchequer), that the act had not a retrospective effect, and that, therefore, the chattels were bound by the writ from the time of the delivery of it to the sheriff, and consequently, they were properly seized under the fi. fa. *Williams v. Smith*, 33 Law Tim. Rep. 167.

INSPECTION OF DOCUMENTS.—*Under 14 & 15 V. c. 99—Costs of application and inspection.*—Where there was an application to inspect books under 14 & 15 V. c. 99 and the order was granted, it was argued, that according to the rule laid down in *Gray on Costs*, the costs of the inspection must be borne by the party seeking it, but that the costs of the application were costs in the cause: Held, that there was no such general rule, and that it was in the discretion of the court to make its order as to the costs. *Stidwell v. Buck*, 7 Week. Rep. 488.

JUDGMENT.—*Entering after death of plaintiff—Within two terms—Costs not taxed for a year—C. L. P. Act, 1852, s. 139.*—By s. 139 of the C. L. P. Act, 1852, the death of either party to an action between the verdict and the judgment, is not to be alleged as error, so as such judgment be entered within two terms after such verdict. A plaintiff died after verdict before judgment was entered; the entry was made within two terms after verdict, but the costs were not taxed for a year: Held, that this was a sufficient entry within the meaning of the act. *Frewen v. Lethbridge*, 33 Law Tim. Rep. 137.

JUDGMENT.—*Time of judicial acts*—*Fraction of a day*—It is an established rule that when a judicial proceeding takes place, it must be considered to have occurred at the earliest possible period of the day on which it took place. In the following case it appeared, that the defendant died about half past nine on the morning of the 28th of May; judgment was marked the same day, immediately after the office was open at eleven, on the authority of *Reg. v. Edward*, 9 Ex. 32: Held, that the judgment was regular, because, being a judicial act, it took precedence of all other acts done on the same day. *Wrights v. Mills*, 33 Law Tim. Rep. 152; 7 Week. Rep. 498.

MANDAMUS [Com. L. Pract. 306—308].—*To levy rate and pay debt*—*C. L. P. Act, 1854, ss. 67, 68, 69*—*Public Health Act, 1848, s. 89*.—The C. L. P. Act, 1854, enables a party who would have been obliged, after having recovered in an action, to resort to a mandamus to enforce his judgment, to apply for a mandamus in the same proceeding as that by which the liability is ascertained, and to avoid the former double process. In a claim for a mandamus to levy a rate and pay a debt under the C. L. P. Act, 1854, it is not necessary to state the specific sum which is due but the mandamus may issue for the sum found to be due by the jury. *Ward v. Lowndes*, 7 Week. Rep. 489.

WRIT OF SUMMONS.—*C. L. P. Act, 1852, s. 18*—*Proceedings against British subjects residing out of the jurisdiction of superior courts*—*Cause of action*—*Where arising*.—The defendant, a resident in Jersey, was served with a writ issuing out of the Court of Exchequer in England, but swore, on an application to set the same aside, that the cause of action did not arise in this country. The affidavits in reply on the part of the plaintiff not clearly showing the contrary: Held, that under the C. L. P. Act, 1852, s. 18, the proceedings should be set aside. *Binet v. Prest*, 33 Law Tim. Rep. 149.

PROBATE AND DIVORCE.

ADMINISTRATION TO CREDITOR.—*Practice*—*Affidavit should show all persons entitled in distribution had been cited*—*Service of citation on minor*.—The affidavits on which application is made for a grant of letters of administration to a creditor should state, that all persons entitled in distribution of the effects of the deceased had been cited. Therefore, when the affidavits only stated that the deceased died a widower and intestate, leaving A., his natural and lawful son, and only next of kin, and that he, though cited, had not appeared, but omitted to state that A. was the only person entitled in distribution, the court refused to grant administration to a creditor. Service of a citation on a minor is effected by serving it on him in the presence of his natural or legal guardian, or of some persons upon whom the care and custody of the minor has for the time being devolved. *Brown v. Wildman*, 28 Law Journ. Rep., P. M. C., 54.

DISSOLUTION OF MARRIAGE.—*Practice*—*Withdrawing petition*.—When the respondent has appeared, the court will not allow the petitioner

to withdraw the petition, unless the respondent consent or has had notice of the motion. *Lutwyche v. Lutwyche and Cox*, 28 Law Journ. Rep., P. M. C., 56.

PROBATE.—*English domicile—Personalty in Scotland—Sec. 14 of Confirmation and Probate Act, 1858.*—A note or memorandum of the domicile of the deceased cannot, under sec. 14 of the Confirmation Probate Act, be indorsed after it has issued. The court will not revoke a probate which has been rightly granted, and has not been taken out under a mistake. *In the Goods of James Muir (deceased)*, 7 Week. Rep. 361.

PROBATE.—*Will made before the Wills Act came into operation—Presumption as to date of unattested alterations by testator.*—Unattested alterations in the handwriting of the testator, in a will made before the Wills Act came into operation, will in the absence of any evidence as to their date, be presumed to have been made before the act came into operation. *Re Streaker*, 28 L. J. R., P. M. C. 50.

BANKRUPTCY AND INSOLVENCY.

ARRANGEMENTS.—*By deed—Bankrupt Law Consolidation Act, 1849, s. 224.*—The following is another instance of the failure of an arrangement by deed. To an action for goods sold and delivered, the defendant pleaded a deed of arrangement under sec. 224 of the Bankrupt Law Consolidation Act. The deed was in the form of a covenant by the defendant with the trustees that "he would carry on and wind up his business in such a manner as the trustees should direct or approve, and would, during the continuance of that arrangement, conduct to a conclusion the liquidation of his business and affairs in which he was then interested for the benefit of his said creditors, and would use his best and utmost endeavours, in accordance with any directions as aforesaid, to sell and convert into money, and collect, get in and receive, recover and liquidate all such personal estate, debts, moneys, goods and effects, and other interests and assets belonging or owing, or to become due, owing, or to belong to him, as would vest in or become subject to the disposition, management, control or administration of the commissioner in bankruptcy, or of his assignees in bankruptcy, if he had become bankrupt on the 19th of May then last past:" Held, per Martin, Watson, and Channel, B. B. (Pollock, C. B., dissentiente), that the deed was not valid. *Snodin v. Boyce*, 33 Law Tim. Rep. 164.

COMMITMENTS OF COUNTY COURT.—*Protection order—Discharge.*—An insolvent, duly protected by the Insolvent Court in respect of a debt in his schedule, will be discharged from any commitment by a county court for the non-payment of such debt, whether the date of the order of commitment was before or after the date of the petition. Where the order of commitment recites that the debtor summoned did not appear, nor allege a sufficient excuse for not appearing, and it appears by his affidavit that he did appear by his attorney's-clerk, and allege an excuse for not appearing, this court will order his discharge. *Re Breckett*, 33 Law Tim. Rep. 140.

COSTS OF NONSUIT.—*Costs not taxed till after vesting order—Dis-*

charge inoperative.—An insolvent's costs in an action commenced by him, in which he was non-suited, were not taxed till after the date of the vesting order: Held, that these costs do not constitute a debt which can be inserted in the schedule until they are taxed; consequently, where the taxation is after the vesting order, the discharge is inoperative as against that debt. *Re Williams*, 33 Law Tim. Rep. 140.

COSTS OF NONSUIT.—*Costs not taxed at the date of the petition.*—Where insolvents, being plaintiffs in an action, are nonsuited, and file a protection petition before their costs of the nonsuit are taxed, they cannot be inserted in a protection schedule, and the petition must be dismissed. *Re Hodge and Chalkley*, 33 Law Tim. Rep. 140.

DEBT.—*Equitable assignment of—Letter to debtor in favour of third person.*—A letter written by A. to his debtor, "authorising and requesting" the latter to pay a sum of money out of moneys due to him from the debtor to C., to whom A. was indebted, and to debit him (A.) with the same, amounts to an equitable assignment of the debt so authorised to be paid to C., notwithstanding there was no recognition or consent on the part of A.'s debtor to pay the money to C. Lord Eldon's decision in *Exparte Louth*, 3 Swanst. 393, followed. *Exparte the Assignees, &c., Re Barker and Barker*, 33 Law Tim. Rep. 140.

FORM OF PETITION.—*Appeal against order of county court judge.*—19 & 20 V. c. 108, s. 43.—A. presented a petition to the county court of G. A day was named for the hearing; the insolvent did not appear, but an attorney attended for him, who applied to the judge for leave to remove the petition from the file, on the ground that it was invalid; the date on which it was filed not appearing on it. The judge refused, and adjourned the hearing sine diè: Held, that the omission of the date of the filing did not invalidate the petition; that the act of the county court judge in refusing to allow the petition to be removed was a judicial act in which he had exercised his discretion, and the superior court would not review his decision. *Re W. Corbett (an insolvent)*, 33 Law Tim. Rep. 152.

TRADER-DEBTOR SUMMONS.—*Rule 70—Particulars, dates.*—The 70th rule of the General Orders of October 19th, 1852, provides that, "The account in such particulars of demand shall be expressed with reasonable and convenient certainty as to dates and all other matters;" where the debt claimed had reference to a charter-party, entered into by the defendant, and in respect of which the debt was payable: Held, that the date was expressed with sufficient precision within the 70th rule of the General Order of October, 1852, notwithstanding no date appeared in the particular of demand. *Re a Trader-debtor Summons*, 33 Law Tim. Rep. 128.

TRADER-DEBTOR SUMMONS.—*Particulars of demand—Description of creditors—Rule 68—Affidavit of debt and summons, discrepancy between—Rule 73—Rule 75—Indorsement.*—Neither the particulars of demand and notice, nor the affidavit of debt, contained the description of the summoning creditor, but in the summons he was described as a "merchant." The

form given in the 68th of the General Orders of October, 1852, was, however, accurately followed: Held, first, that the requirements of the Bankruptcy Act, 1849, were satisfied by following the form, and that it was not necessary to describe the summoning creditor in the particulars of demand as a merchant. Secondly, that the discrepancy between the particulars of demand and affidavit of debt and the summons was immaterial. Thirdly, that the indorsement on the back of the summons, that it was "founded upon an affidavit of debt of R., F., and G. H.," the affidavit being only that of R. F., was an addition not required by the 75th rule, and therefore did not invalidate the summons. *Re a Trader-debtor-Summons*, 38 Law Tim. Rep. 170.

CRIMINAL LAW.

AMENDING ORDER OF JUSTICES.—12 & 13 V. c. 45, s. 7—*Venue not stated in margin—Justices not stated to be acting within jurisdiction.*—Where an order of justices made within their jurisdiction omitted the venue in the margin, and the statement that they were justices in the jurisdiction, the court, on having the order brought before them by certiorari, amended it under sec. 7 of 12 & 13 V. c. 45. *Reg. v. The Inhabitants of Hellingley*, 7 Week. Rep. 413.

CERTIORARI.—*To remove a presentment from a court of sewers—Necessity for entering into a recognisance under sec. 2 of the 5 & 6 W. 4, c. 33.*—By sec. 2 of the 5 & 6 W. 4, c. 33, it is enacted, "that instead of the recognisance now by law required to be entered before the allowance of a writ of certiorari, every person indicted or presented in any court of sessions, assize, oyer and terminer, gaol delivery, or any other court, who shall obtain a writ of certiorari for removing any indictment or presentment whatsoever into the Court of King's Bench, shall, before the allowance of such writ, enter into recognisance, in such sum, and with such securities, as the said Court of King's Bench shall direct, which recognisance shall contain the same conditions as are now by the said act required in cases of indictment removed from the general or quarter sessions of the peace," &c. It has been decided that the above act applies to a presentment of a court of sewers removed by certiorari into the Court of Queen's Bench, and where, therefore, such a presentment had been so removed, but the defendant had not entered into the recognisance mentioned in sec. 2, on the ground that such a court was not within the meaning of the section: Held, that a presentment of a court of sewers is within the operation of the said second section of the statute, and that a recognisance ought to have been entered into before the allowance of the writ of certiorari. *Reg. v. Baker*, 38 Law Tim. Rep. 138.

COSTS.—*Appeal under 20 & 21 Vic. c. 43.*—Though the rule is, that costs follow the judgment, if no special direction is given, in cases sent by justices at petty sessions for the consideration of the court, under 20 & 21 V. c. 43, yet that rule will not be applied where no one appears on behalf of the respondents. *Lee v. Swain*, 7 Week. Rep. 432.

COUNTY COURT PROCESS.—*Acting under false colour and pretence of process of a county court*—9 & 10 V. c. 95, s. 57.—By the 9 & 10 V. c. 95, s. 57, every person who shall deliver or cause to be delivered to any person any paper falsely purporting to be a copy of a summons, or other process of the said court, or who shall act or profess to act under any false colour or pretence of process of the court, shall be guilty of felony. B. being indebted to A., A. obtained a blank form for plaintiffs' instructions to issue county court summons. This he filled up with particulars of the names and addresses of himself and B. as plaintiff and defendant, and of the nature and amount of the claim, and without any authority signed it with the name of the registrar, indorsing also a notice signed also by A. in the name of the registrar, and without his authority, that unless the amount claimed were paid by B. on a certain day, an execution warrant would issue against him. This paper he delivered to B. with intent thereby to obtain the payment of his debt: Held (affirming *Regina v. Evans*, 26 L. J. M. C. 92; 5-W. R. 652), that this was "acting, or professing to act under false colour and pretence of process of the county court" within the meaning of 9 & 10 Vic. c. 95, s. 57. *Reg. v. Alexander Richmond*, 7 Week. Rep. 417.

MUNICIPAL CORPORATION.—*Borough rate—Remedy to enforce the contribution to the borough fund from a township in the borough—Mandamus.*—A mandamus will not be granted to enforce from the overseers of a township, in a municipal borough, the quota of a pound rate towards the borough fund, payable by the township, a remedy by distress warrant under the hand and seal of the mayor being given by the 7 W. 4, and 1 V. c. 81, s. 1. *Reg. v. The Overseers of Hunslet*, 33 Law Tim. Rep. 104.

PAUPER LUNATIC.—16 & 17 V. c. 97, s. 107.—*Signature of statement in writing containing grounds of adjudication.*—Where the guardians of a union, on behalf of a township within the union, obtain an order of adjudication and for maintenance of a pauper lunatic, it is sufficient that the statement in writing which is required by s. 107 of 16 & 17 V. c. 97, and which sets forth the grounds of adjudication, &c., is signed by the overseers of the township. *Reg. v. The Inhabitants of Heaton*, 7 Week. Rep. 419.

POOR LAW AUDITOR.—*Disallowance by—Refusal of magistrate to issue distress warrant for amount disallowed.*—A magistrate, to whom application is made for a distress warrant for a sum of money disallowed by the poor law auditor, has no jurisdiction to decide as to the legality of the disallowance, but is bound to issue his warrant. *Reg. v. Finnis and Others*, 33 Law Tim. Rep. 146.

PUBLIC HEALTH ACT, 1848.—*Local Government Act, 1858—Certiorari—Duties of surveyor to local board of health—Extra services as engineer—Remuneration.*—Under the Public Health Act, 1848, proceedings are not removeable by certiorari. Under the Local Government Act, 1858, s. 60, proceedings may be removed under certain circumstances. A resolution and order for payment of a sum of money was made by the local board of health, acting under the former act: Held, that the latter act did not apply, and the court discharged a rule nisi for a certiorari. A. was

engaged at a certain salary as surveyor to a local board of health; his duties were defined to be, to take levels and prepare plans, sections, specifications, and estimates of all works, &c.; to examine and report as to the supply of water, and to take measures for the laying on of water; to overlook the waterworks belonging to the city, and to be thereafter constructed; and that he "shall devote his whole time to the service of the board, it being declared, that he shall on no account be paid for extra duties rendered to the said board, and not undertake any other employment, save and except any engagement which may be made with him by the mayor, &c., as a municipal body." The salary was £50 a year as surveyor, and £100 for the duties connected with the waterworks. A. was employed in enlarging and improving certain old waterworks which were transferred to the corporation, and in laying down mains into the city, and he performed duties therein requiring the skill of an able engineer. For these services the corporation, acting as a local board of health, passed a resolution and order to pay him an extra sum of £100: Held, that such order was legal *Reg. v. The Mayor, &c., of Gloucester*, 33 Law Tim. Rep. 146.

POOR LAW UNION.—*Extraordinary charges—Judgment creditor—Execution—Money in hands of treasurer—Injunction.*—The money contributed by the various parishes of a union for the purpose of paying such expenses as are chargeable by the guardians upon the several parishes, and in the hands of the treasurer, is not available for the purpose of satisfying a judgment obtained by a creditor for goods supplied to the union. Such creditor restrained from levying upon his judgment: *Quære*, whether as to debts incurred within the current year, a creditor might not issue an execution upon the property of the union. *The Attorney-General v. Wilkinson*, 7 Week. Rep. 301.

SUMMONS, ERROR IN.—*Fatal*—11 & 12 V. c. 43, s. 1.—Where a summons was issued, charging a person with being drunk and disorderly under 10 & 11 V. c. 89, s. 29, and he was only proved to have been drunk: Held, that he could not be thereupon convicted under the 21 Jac. 1, c. 7, this not being a defect which was cured by the proviso in 11 & 12 V. c. 43, s. 1. *Martin v. Pridgeon*, 7 Week. Rep. 412.

TOLL.—*Exemption from toll—Militia officer—Payment by companion—Demand and receipt—Mutiny Act, sec. 3.*—Respondent, a militia officer, was riding in company with a friend, the former being in uniform, the latter being mufti. On the toll being demanded at a toll gate, the friend handed a shilling to the keeper, at the same time drawing his intention to the fact that respondent was exempt; but the toll keeper took for both horses: Held, that the above facts showed a demand and receipt within the act, and that the appellant was properly convicted by the magistrates for improperly taking toll. *Pellatt v. Ledger*, 33 Law Tim. Rep. 105.

moot Points.

No. 76.—*Re-surrender of Mortgaged Copyholds.*

By a deed, copyholds were vested in a trustee for certain purposes (which have since been satisfied), and subject thereto in trust for A. and his heirs. A mortgage by surrender was subsequently made, and the mortgagee was admitted with a proviso for re-surrender, on payment of principal and interest, to the trustee his heirs and assigns. The mortgage-money has been paid, and all the trusts, except those in favour of A., who is of age, have been performed. A. requires the mortgagor to surrender to him and not to his trustee, but the mortgagee declines to surrender to any one but the trustee. Is he justified in so doing? Suppose he should surrender to A., would the lord and the steward be entitled to more than one fine and set of fees, and could the lord refuse to accept such surrender? Of course, if the lord and steward obtained double fines and fees they would not make any objection.

M. J. N.

No. 77.—*Stamp—Agreement—Reference to Unstamped Conditions of Sale.*

An agreement for the sale of an estate is entered into by a vendor and purchaser, and by it a reference is made to a printed particular of sale, and also to the conditions annexed to such conditions, and it is stipulated that the purchaser shall be bound by the latter so far as they are applicable to a sale by private contract. The particulars and conditions which are unstamped are annexed to the agreement, and together they make more than fifteen folios. Will a stamp of 2s. 6d. suffice (see *Peate v. Dicken*, 1 C. M. & R. 422; *Attwood v. Small*, 7 B. & C. 390).

H. S.

No. 78.—*Right of Way—Effect of Non-User.*

The parcels of a conveyance dated 1792, after describing a field, contained the following words (*inter alia*):—"And also full and free liberty, power, and authority to and for the said A. B., his heirs, and assigns, from time to time, and at all times thereafter, at his and their free will and pleasure, to pass and repass to and from the said first mentioned piece of land thereby conveyed, with horses, carts, and carriages upon and over a certain bridge erected upon the Ripper Hipper, adjoining to the upper part of said close, and from thence over the bottom or north east corner thereof, through and over the top or west of said piece of land so purchased by C. D. as aforesaid; he the said A. B., his heirs, and assigns contributing and paying a proportionate part of the expenses and charges which should from time to time attend the keeping of said last mentioned bridge in repair." The bridge has been in use ever since date of conveyance by parties other than A. B., and he has never availed himself of the right of way over the piece of land lying between the bridge and his land.

Upon this land C. D. is building, and A. B. says, "you must desist or grant me right of way to my land by diverted road."

A. B. has always had other ways to his land more convenient than the way by the bridge and over the space between bridge and his land.

Under these circumstances, the mooter would be glad to know whether A. B. has not lost his right of way by non-user?

References to authorities would oblige.

T. F. P.

No. 79.—*Assignment—Insolvent Debtors' Court—Remedy.*

A. executed an assignment to B. of certain book debts, with power to get in, compound, sue for, and recover the same. A. subsequently filed a petition (being in prison) to the Insolvent Debtors' Court.

The mooter would be glad to know what remedy has B. to recover the debts.

T. F. P.

No. 80.—*Equitable Conversion by Married Woman.*

A married woman, entitled in fee simple to an unsettled estate in fee simple, mortgages the same, and her husband joins in the deed, which is also duly acknowledged. A transfer is taken of this mortgage by A., who advances a further sum of money, and the husband and wife join in the deed, and thereby it is agreed that A. shall hold the property in trust to sell, and out of the proceeds to pay his principal and interest and to hold the residue for the married woman as part of her personal estate for her sole and separate use independently of her husband, and on her death to pay the residue to her executors or administrators as part of her personal estate. This deed was not acknowledged. The property was never sold, and the transferee was paid out of the rents and profits. Both husband and wife are dead, and the heir-at-law of the married woman (the mortgagor), requires a reconveyance. The mortgagee refuses to execute such a deed to him, contending that the personal representatives of the married woman are the proper persons to have a reconveyance. Is this correct?

W. H. S.

No. 81.—*Seizure of Goods after illegal Entry.*

If a sheriff's officer seize goods, having, in order to make that seizure, illegally broken open an outer door of a dwelling-house in which they were contained, can the execution be set aside on the ground of the door having been so broken open? (see *Semayne's Case*, 5 Co. Rep. 91 b.).

L. S. D. S.

No. 82.—*Covenants running with Land.*

Does the burden of a covenant, entered into by a lessee with a reversioner and a person having no estate, jointly, run with the land? (see *Wakefield v. Brown*, 9 Q. B. 209; *Magnay v. Edwards*, 13 C. B. 479; 1 *Smith's L. C.* 49).

L. S. D. S.

No. 83.—*Felony of Obligee of Bond.*

The obligee in a bond is convicted of felony, and the Crown afterwards grants the bond to A., the wife of the felon. The obligor, prior to the grant, but subsequently to the conviction, petitions in bankruptcy for

protection, and five-sixths of his creditors afterwards agree to his proposal, and his estate is vested in an official assignee. Is the grantee bound by the bankruptcy proceedings and entitled to a dividend only with the other creditors, or can she sue the obligor for the whole amount of the bond, and if so, can she issue execution against the effects vested in the official assignee and remaining in specie?

O. F. R.

No. 84.—*Tenant for Life of Leaseholds and Remainderman—Forfeiture by Acts of Tenant for Life.*

A termor devised his leaseholds to A. for life, he paying the rents and performing the covenants in the lease, with remainder to B. The tenant for life has neglected to pay the rents and has otherwise committed breaches of covenant. The landlord of the premises threatens to re-enter for the forfeiture. What course should the remainderman pursue in order to protect himself.

E. M.

No. 85.—*Settlement of Leaseholds occupied by Husband.*

A post-nuptial settlement is about to be made, comprising (inter alia) the leasehold dwelling-house in which the husband resides and intends to continue to reside. The trusts are to pay the rents, interest, and dividends to the wife for her life, for her separate use. What provisions should be inserted with reference to the leasehold dwelling-house for which the husband is not to be required to pay rent during such time as he shall continue to reside therein?

S. O. P.

No. 86.—*Implying Cross Remainders.*

A., by his will, gave all his estates to trustees, upon trust as to one-sixth part for his son James for life, and after his death, for his children as he should appoint, and in default of appointment, for children equally, with cross-remainders between them; and in default of issue of James, upon trust, as to his one-sixth part, for the testator's five other sons, and the issue of such of them as should be dead. Then follow similar limitations of the remaining five-sixth parts to the testator's five other sons. Three of the testator's sons died without issue, whereby their shares devolved to the children of the three other sons who had issue. One of the children of one of the sons died without issue, and his share in his father's *original* one-sixth passed to his brothers and sisters under the limitation of cross-remainders in the will. Does also his share in the accruing shares of his uncles, who died without issue, pass to his brothers and sisters by implication of cross-remainders, or does it descend to the heir-at-law of the testator as undisposed of? It should be borne in mind that cross-remainders are expressly limited as to the original shares, which raises the doubt whether they can be implied as to the accruing shares.

R. F. L.

No. 87.—*Barring Entail.*

A. (in execution of a power given her under a settlement made on her marriage with a former husband), by her will, gave an estate to trustees, upon trust for her second husband, B., his heirs, &c., during the lives of

four annuitants, subject to the payment of certain annuities to the said annuitants; and after the decease of the said annuitants, upon trust for her nephew C. and his heir male; and in default of heir male of C., for his brother D., and his heir male; and in default of heir male of D., upon trust for E., his heirs and assigns for ever. The husband, B. (who was one of the trustees), entered into receipt of the rents, and in the lifetime of the annuitants purchased the estate of C., the nephew of the testatrix, who was the first tenant in tail after the deaths of the annuitants. C., at the date of the conveyance, had an heir male then born, and suffered a recovery. The surviving annuitant died about six years since; and C., the first tenant in tail, about four years since. Did the recovery bar the entail? If not, is not C.'s heir male entitled to the property? R. F. L.

No. 88.—*Negligence of Assignees of Bankrupt.*

A. became bankrupt, and obtained his certificate in 1854. The estate consisted of one-third of £7,550, which would devolve to the bankrupt if his wife survived an old lady, who has since died, leaving the bankrupt's wife her surviving. The bankrupt obtained his wife's share of the £7,550, and, with his wife, left England. Can a creditor of the bankrupt, who has not proved his debt, sustain an action against the assignees for negligence in allowing the bankrupt to obtain the said money, and decamp with it? or, if not, has he any, and *what*, other remedy against the assignees?

R. F. L.

No. 89.—*Trustees Insuring Trust Premises without Authority—Expenses, &c.*

Are trustees justified in insuring the trust property, where there is no power for so doing given them by the trust deed, or otherwise, and charging the expenses thereof against the estate? I opine that they are, but should feel obliged by a reference to an authority upon the point.

JOHN W. S. LAVENDER.

No. 90.—*Equitable Mortgage—Notice.*

Is an equitable mortgagee (in the absence of stipulation) in every or any case, entitled to six months' notice in writing prior to the payment of his money?

JOHN W. S. LAVENDER.

No. 91.—*Insolvency—Insolvent Proving Fraud against himself.*

An insolvent contracting debts in a variety of places is ground of suspicion as to his general conduct; and yet, when none of those creditors complain, it is no ground of remand. Goods bought in the ordinary way of trade, to be sold at a profit, although the insolvent may be deeply embarrassed, will not be considered a debt contracted without reasonable expectation of payment. *Quære*, can an insolvent be called on to prove a case of fraud against himself?

JOHN W. S. LAVENDER.

No. 92.—*Conveyance—Covenant.*

A., by deed, conveys two farms to B., and covenants with B., his heirs, and assigns (inter alia), for quiet enjoyment. B. afterwards conveys one

of the farms to C. Can C. sue A. on this covenant, or is B. alone entitled so to do, the property being now subdivided? M. GEO. BOOTH.

No. 93.—*Attorney to Corporation—Appointed by Parol—Costs.*

W. was appointed, by parol, attorney to the town council of H., and after prosecuting and defending several actions, and doing, at their request, other business, delivered, at the termination of the business (when he was discharged), a signed bill of costs for the above work. Can he recover the amount of his bill? It is said *not*, as an attorney to a corporation *must* be appointed by writing under seal. Is this so? The mooter considers the attorney can recover the bill. Will correspondents refer to cases, and oblige
A SOLICITOR.

No. 94.—*Servant's Authority to bind Master.*

It is a rule that where a master sends a servant to a shop to buy goods, &c., being a shop where such master usually deals on credit, the shopman is safe in supplying to such servant any goods required, and to place the same to the credit of the master. Not so where the shop is one where the master is *not* in the habit of dealing: the reason being that, in the former case, the master is necessarily known to such shopman; but in the second case *he may not be*. *Quære*, supposing A., a master, not to be in the habit of sending for goods, &c., on credit, to the shop of B., but of paying ready money at that particular shop, would the shopman be safe in supplying such servant with the goods, &c., and crediting the master with them? The mooter contends that he would.
T. K. SMITH.

No. 95.—*Insolvent—Attorney appointed Assignee—Costs, &c.*

Can a solicitor, who is appointed assignee to the estate and effects of an insolvent debtor, charge for professional business done by him in connection with the insolvency? I think it has been decided that he cannot. If I am correct, will some correspondent give the reason for the rule.
T. K. SMITH.

No. 96.—*Deed not Stamped—Conditions of Sale.*

Conditions of sale stipulate that the purchaser shall assume all deeds comprised in the abstract of title to have been duly stamped. One of the deeds is not stamped correctly, and the purchaser's solicitor makes a requisition as to it, and the reply is, that he is not allowed by the conditions to make such a requisition, and he rejoins, that you do not assume a known fact, and that the vendors should have stated in the conditions that the deed had not the proper stamps (which notion is thought by the mooter to be absurd). Is the purchaser entitled to have the deed properly stamped, or does the above condition preclude him from requiring it?
JOHN BRYAN.

Answers to Moot Points.

No. 38.—*Appointment—Fraud upon the Power (ante, p. 102).*

Not having seen an answer to this point, I beg to suggest the following: am of opinion that, there being no unreasonable influence by the father I

upon the son, the arrangement can be carried out, more especially as the appointment takes place after the son's attaining his majority, and is for the joint benefit of himself and brother. Surely there is nothing unreasonable in this. With regard to parental influence, this is inseparable from transactions between father and son, and is not (it has been decided) a sufficient ground for invalidating a family arrangement, unless it appears (which is not the case here), that such influence has been exercised to *benefit the parent*.

Though cases of the settlement of property, as between parent and child, are regarded with jealousy (Twedell, Turn. & R. 13), yet, if the resettlement be not obtained by misrepresentation or suppression of the truth, if it be one in which the father acquires no personal benefit, and in other respects be a reasonable one, it will be supported, even though the father *did* exert parental authority and influence over the son to procure the execution of it (Hoghton v. Hoghton, 15 Beav. 278).

Where, in the opinion of the court, a new settlement, considering all the provisions together, was not *unduly* favourable to the father, and not in other respects improper, the court refused to set aside the transaction, although the family solicitor had acted for all parties in the transaction, and though it appeared that the deeds actually executed by the parties were in some respect not in accordance with the proposals for the settlement which had been agreed upon, the alterations having been made by the directions of the solicitor, without the knowledge or sanction of either party, after the deeds had been approved (Vide Hartopp v. Hartopp, 27 L. T. R. 37).

No. 46.—*Progressive Stamp Duty—Acknowledgment of Deed* (ante, p. 128).

For answer to this Moot Point, see *Law Times* of April 9th, 1859. It does not require the stamp

W. W.

No. 50.—*Mortgage of Copyholds—Dower* (ante, p. 129).

The wife having acquired a new estate, must join in the conveyance, and acknowledge the deed in the ordinary matter. The lord has no more interest in the estate.

W. W.

No. 63.—*Conveyance—Defects in Title* (ante, p. 163).

Where a purchaser consents to take a defective title, relying for his security on the vendor's covenants, the agreement of the parties should be particularly mentioned; and unless the objection to the title appear on the face of the conveyance, the covenants to guard against it should be entered into by a separate instrument (Sug. Vend. & Pur. 13th ed. p. 462).

JOHN BRYAN.

No. 65.—*Beneficial Devise subject to Charge—Statute of Limitations* (ante, pp. 164, 173).

The opinions of your correspondents on this point seem quite contradictory. I think this arises from their confounding the several statutes of limitations. It is the statute 21 Jac. 1, c. 16, which is referred to in Williams on Executors, as not running where a trust or charge is created by will upon real estate. If, therefore, the debt had been a simple contract

one, the statute would not have run, if the debt had not been barred in the testator's life; but as it is a specialty debt, and therefore coming within the statute 3 & 4 W. 4, c. 42, I am not aware that there is any law to prevent that statute from running in a case like this.

Such is the view of the case I have taken, which, if wrong, I have no doubt will be corrected. It is, however, not a little remarkable that the text books, so far as I have consulted them, do not contain a clear exposition of a point of such importance and interest. CAUSIDICUS.

No. 69.—*Public Concert—Reservation of Seats* (pp. 165, 176).

Under the circumstances stated in the moot point, I am quite of opinion that A. was justified in taking any seat he thought proper. C. F. W.

No. 70.—*Younger Brother's Entry* (pp. 165, 176).

The eldest son is bound by the doctrine of descent cast, laid down by Littleton, sec. 385, and cannot recover the lands. The statute 3 & 4 Will. 4, c. 27, only applied to such descent casts as happened after its passing 31st December, 1838. C. F. W.

No. 70.—*Younger Brother's Entry* (*ante*, p. 165).

The eldest son is certainly not bound by the doctrine of descent cast, which, it is provided by the statute 3 & 4 W. 4, c. 27, s. 39, shall not defeat any right of entry or action for the recovery of land. It is, I think, equally clear, from the same statute (which, I presume, is the one referred to by the mooter), that he cannot now recover the lands. The 2nd sec. says, that the entry or action must be made or brought within twenty years after the right accrued; and by the 35th section, at the determination of the period limited for making an entry or bringing an action, the right and title of the person who might, within the time limited, have had such remedies for the recovery of land, rent, or advowsons, is *extinguished*. It is more than twenty years since the intestate died, and therefore the eldest son's right is now extinguished, unless he has been under some disabilities not mentioned in the moot point. CAUSIDICUS.

No. 70.—*Younger Brother's Entry* (*ante*, p. 165).

I think that, in the case stated, the statute 3 & 4 Will. 4, c. 27, s. 39 (which is, I suppose, the one referred to), has no operation, for that section only affects a descent cast happening *after* the 31st December, 1823, and in this case, as the heirs of the youngest son entered on the lands *before* that statute, the descent cast happened before it; and consequently the old law governs the present case, and the eldest son cannot recover the lands. And if this had not been the case he would be barred by the same statute (s. 2), having been out of possession more than twenty years.

JOHN BRYAN.

No. 71.—*Vested and Contingent Remainders* (*ante*, p. 165).

I think both these remainders are contingent, because, although they are limited to certain persons, the events upon which they are to take effect are vague and uncertain. If, for instance, A. dies before the determination of

the estate limited to the trustees, his estate never takes effect; and if B. does not survive A., the same observation will apply to him (see an illustration in point, 2 Bl. Com. 170).

CAUSIDICUS.

No. 71.—*Vested and Contingent Remainders* (ante, p. 165).

I think that the limitation to A., and that to B., are both contingent, as they are both limited upon uncertain events.

JOHN BRYAN.

No. 72.—*Vendor and Purchaser—Conditions of Sale* (p. 165).

If the vendor was aware that the title deeds to his estate were in the hands of a third person, without any covenant for production, I do not think the purchaser, having no notice that such was the case, would be bound by the stipulation contained in the conditions of sale, nor would equity, under such circumstances, decree a specific performance. He who seeks equity must do equity. But if the vendor was not himself aware of the omission of such a covenant by the holder of the deeds, and was acting *bonâ fide*, I think the purchaser would be bound by the conditions of sale, and specific performance would be decreed against him.

C. J. W.

No. 76.—*Re-surrender of Copyholds* (ante, p. 196).

The trusts preceding the one in favour of A., absolutely, having been satisfied, I am of opinion that he is quite right in requiring the surrender to be made to himself, and that the lord would be bound to accept such surrender; but in strictness, the trustees should concur in the re-surrender to A. for the purpose of signifying their consent thereto, and in verification of the fact that the preceding trusts have been satisfied.

The lord and steward would be entitled to one fine, and one set of fees only.

F. A. C.

No. 77.—*Stamp—Agreement—Reference to Unstamped Conditions of Sale* (ante, p. 196).

A stamp of 2s. 6d., I think, will not be sufficient, as the particular and conditions form part of the agreement, and are annexed thereto, and the words of the act are, "put or indorsed thereon, or annexed thereto." The difference between this case and that of *Attwood v. Small* (7 B. & C. 390), referred to by the mooter, is, that in the latter the agreement was only referred to, while in the present one the conditions are annexed, and consequently come under the precise words of the act.

T. D. G.

No. 78.—*Right of Way—Effect of Non-user* (ante, p. 196).

I think that C. D., having had undisturbed possession of his land, over which the right of way was granted for upwards of sixty years, he is now clearly entitled to his land discharged from that right, and may, consequently, build upon it; and by referring to the case of *Moore v. Rawson* (3 B. & C. 332), it will be found, that as after twenty years adverse enjoyment, the law presumes a grant, so after a disuse for the same period (as regards rights of common and way, and as regards some other rights, for a less period) the law presumes a release. So that, reasoning either from C. D.'s undisturbed possession or A. B.'s non-user, the same conclusion

must be arrived at—viz., that C. D.'s land is now discharged from the incumbrance of A. B.'s former right of way over it. T. D. G.

No. 77.—*Stamp—Agreement—Reference to Unstamped Conditions of Sale* (ante, p. 196).

The particulars and conditions of sale having been annexed to the agreement, and referred to therein, all would be read together and considered as one document, and therefore requires the progressive stamp. Had not the particulars and conditions been annexed, a single 2s. 6d. stamp would be sufficient (*Veal v. Nichols*, 1 M. & Ro. 248). The case of the *Fishmonger's Co. v. Dimsdale* (22 L. J. N. S., C. P. 44; 12 Com. B. Rep. 557), upon first sight, appears to overrule this dictum; but, on considering the reasons the court proceeded on in coming to the decision they did in that case, I think the case of *Veal v. Nicholls* must be still held to be the law affecting the agreement the subject of the Moot Point. F. A. C.

No. 78.—*Right of way—Effect of non-user* (ante, p. 196).

In this case, I am of opinion that the fact of the non-user of the right of way by A. B. has not the effect of depriving him of his right, inasmuch as that right was granted him by deed, between which and a right gained by prescription there is this distinction—that a surrender of a right granted by deed must, to be effectual, be by a similar instrument; whereas, a right of way, gained by prescription, may be lost by non-user, and circumstances showing an intention of abandoning the right. It is no answer to the claim of A. B. that he has other ways to his land, which may, or may not, be more convenient, according to the opinions of different persons.

The mooter appears to lay some stress upon the charge made by the deed on A. B. for contributing to the expense of repairing the bridge, and (although not so stated) seems to infer that A. B. has never so contributed. Presuming I am correct in that conclusion, I do not think that circumstance would prejudice his right, unless a demand of his proportion had been made upon him, and he refused to pay. F. A. C.

No. 79.—*Assignment—Insolvent Debtor's Court—Remedy* (ante, p. 197).

This appears to me to be *sui generis*. There are several difficulties in the case to be met. First arises the question, when, under what circumstances, and for what consideration, was the assignment made? As it would be necessary in recovering the debts to sue in the name of A., the question arises (supposing the assignment to be *bonâ fide* and valid), in whose name proceedings should be taken in consequence of A.'s insolvency, the right of suing having passed from him. Supposing the assignment to be sustained, the court would probably hold the insolvent assignees trustees for B., and direct proceedings to be taken in their names. F. A. C.

No. 80.—*Equitable Conversion by Married Woman* (ante, p. 197).

I consider the mortgagee, under the circumstances stated in the moot point, perfectly justified in his refusal to execute a reconveyance, either to the heir at law or personal representatives of the wife, without a direction

of the court. I presume, that, upon the transfer, the property was discharged from the proviso for redemption contained in the original mortgage deed; if I am right in coming to that conclusion, the second deed would not be simply a transfer, but a new mortgage, which, I consider, would require to be acknowledged by the wife; independent of that point, the second deed is, in its terms, quite different from the first.

I gather from the statement, that the transfer does not contain any proviso for redemption,—if that is so, the nature of the trusts (supposing the deed did not require to be acknowledged by the wife, or presuming it had been so acknowledged) converts the realty into personalty (*Marechaux and others v. Case*, 1 L. J. Rep., N. S., Ch. 86; in *re Clarke's Trusts*, 22 L. J. Rep., N. S., Ch. 230).

F. A. C.

No. 80.—*Equitable Conversion by Married Woman* (*ante*, p. 197).

It appears to me, that in this case there is not any one entitled to a reconveyance of the property, it never having been, in fact, conveyed, because the deed, by which it was purported to be conveyed, was not acknowledged; and this being so, and the mortgage debt having been discharged, the heir-at-law is now absolutely entitled in the same way as he would have been had no mortgage ever been made.

T. D. G.

No. 81.—*Seizure of Goods after Illegal Entry* (*ante*, p. 197).

I am of opinion that the execution cannot be set aside, but the sheriff is liable to an action for trespass.

S. W. TURNER.

No. 83.—*Felony of Obligor of Bond* (*ante*, p. 197).

A. is bound by the bankruptcy proceedings, and entitled to a dividend only with the other creditors. At the first sitting creditors prove their debts, and if three-fifths in number and value of those who have proved debts to the amount of £10 and upwards assent to the proposal, a sitting for confirmation is appointed; if, at the second sitting, three-fifths in number and value of the creditors, who have proved debts to the amount of £10 and upwards, agree to accept the resolution, it is *then binding on all*, and the court, if it thinks the proposal reasonable and proper to be executed, approves and confirms the same. When the resolution or agreement has been carried into effect, the court gives to the petitioning debtor a certificate thereof, and such certificate operates as a certificate of conformity, and such certificate operates, to all intents and purposes, as fully as if the same were a certificate of conformity under a bankruptcy (see 12 & 13 V. c. 106, s. 215, 216, 221).

S. W. TURNER.

No. 87.—*Barring Entail* (*ante* p. 198).

I incline to the opinion that C.'s heir male is entitled to the property; because it was provided by 14 Eliz. c. 8, that a recovery, suffered by a tenant for life without consent of the persons in reversion or vested remainder, should, as against such persons, be void; and I would suggest, that even were the entail barred by the recovery, yet the conveyance is liable to be set aside, the property having been sold by a trustee to himself (see *Sugden's Vend.* vol. 2, p. 895).

T. D. G.

No. 88.—*Negligence of Assignee of Bankrupt* (ante, p. 199).

I am of opinion that a creditor, who has not proved his debt, cannot sustain an action against the assignee.

S. W. TURNER.

No. 90.—*Equitable Mortgage—Notice* (ante, p. 199).

Certainly not. The mortgagor may at any time disencumber the land, and extinguish the debt, by paying or tendering to his mortgagee the amount due to him. If a stipulation has been made in the agreement requiring notice, the case is of course otherwise (*Hooper v. Ramsbottom*, 6 Taunt. 12; *S. C.* 4 Campb. 121; *Havington v. Price*, 3 B. & Ad. 170).

A. K. R.

No. 92.—*Conveyance—Covenant* (ante, p. 199).

A covenant for "quiet enjoyment" is a "covenant running with the land;" and therefore C. is entitled to sue A. upon it. But C. must take the estate that B. held in the land, and no other, for if he takes another and a different estate in the same land, he cannot sue upon the covenants (*Roach v. Wadham*, 6 East. 289).

A. K. R.

No. 92.—*Conveyance—Covenant* (ante, p. 199).

I am of opinion that C. cannot sue A. on this covenant; for, on referring to *Preston on Abstracts*, I find the following passage: "Purchasers in general attach more value to covenants for title than they are worth, considering the property of parties, the chance of eventual insolvency, &c. Covenants rarely produce the benefit which is expected from them; and when the property is subdivided by sales, it seems to follow, from a maxim of law, that the purchasers lose the benefit of the former covenants, on the ground that the remedy cannot be apportioned; or in more correct terms, the covenantor cannot be subjected to several actions. Thus, when a man sells two farms to A., and covenants with him, his heirs, and assigns, and one of these farms is sold by A. to B., B. can never sue on this covenant, since it would subject the covenantor to several actions;" and, therefore, I am of opinion that B. alone is entitled to sue A. (vide *Preston on Abstracts*, vol. 3, pp. 57, and 58; also *Sugden on Vendors and Purchasers*, 11th ed, vol. 2 p. 743.

J. IBBERSOULE.

No. 92.—*Conveyance—Covenant* (ante, p. 199).

With regard to this point, the authorities seem to differ; for in 3 *Prest Abst.* 57, we find it stated, "That, where property is divided by sales, it seems to follow from a maxim of law, that the purchasers lose the benefit of the former covenants, on the ground that the covenant cannot be apportioned; or in more correct terms, the covenantor cannot be subjected to several actions. Thus, where a man sells two farms to A., and covenants with him, his heirs, and assigns, and one of these farms is sold by A. to B.," which is precisely the present case, "B. cannot sue on the covenants, since it would subject the covenantor to several actions."

The above opinion, however, is controverted by Lord St. Leonards, who

says that the better opinion seems to be that an alienee of the estate could maintain covenant against the covenantor where covenants run with the land; and as such an action would lie for damages which would be measured by the loss of the assignee, as far as he might be entitled to recover it under the covenant (Sug. 508); but the same great writer suggests a doubt whether, in order that the alienee may sue, he must not only claim the estate of the covenantee, but also claim under a conveyance or appointment of the covenantor (Sug. 713). The Real Property Commissioners consider, however, that this doubt is set at rest by authority (3rd Rep. p. 52).

In Dart's Vend. and Purch. it is said that the benefit of the covenant will go with the estate of the original covenantee, although leasehold and copyhold (vide Dart's Vend. and Pur. 3rd ed. 504, and cases there cited).

After considering these several authorities, I am of opinion that C. can sue A. on his covenant for quiet enjoyment. EQUITAS.

ERRATA.

Page 169, line 10 from bottom, for "He is the *only* proper party", read "He is *also* the proper party."

Page 172, line 2 from top, for "the dictum of Baron Rolfe's dictum," read "the dictum of Baron Rolfe."

Debating Societies.

BIRMINGHAM LAW STUDENTS' SOCIETY.

MOOT POINT, No. 265.

Is an unregistered judgment recovered subsequent to the statute 2 V. c. 11, entitled to precedence, as at common law, in the administration of assets?

The order in which assets were administered at common law was—1st, debts due to the Crown; 2nd, debts of record, under which were classed judgments, statutes, and recognisances; 3rd, specialties; and 4th, simple contract debts; and as notice of a judgment was always presumed on the ground, that every one was supposed to know what was passing in the King's Court, an executor was liable if assets were applied by him in payment of debts of a lesser degree, while judgment debts remained unsatisfied, of the existence of which he was, in fact, altogether ignorant. By the statute 4 & 5 Wm., & M. c. 20, after reciting that great mischief and damage had happened to heirs, executors, and administrators, and also to purchasers and mortgagees, by judgments entered upon record in their Majesties Courts at Westminster, against the persons, defendants, by reason of the difficulty there was in finding out such judgments: For remedy whereof, it was enacted, that no judgment should affect any lands or tenements as to purchasers or mortgagees, or have any preference against heirs, executors, or administrators, in the administration of their ancestor's, testator's, or intestate's effects, unless docketted under the provisions of that statute. On the statute, it has been decided, that in the administration

of assets, a judgment not docketed pursuant to the statute was to be considered only as a simple contract debt (see *Hickey v. Hestor*, 6 T. R. 384; *Jefferson v. Morton*, 2 Saund. 9; *Hall v. Tupper*, 3 B. & Adolph. 656). But the statute 1 & 2 Vic. c. 110, after enabling a judgment creditor to take, under an *elegit*, the whole instead of a moiety of his debtor's lands as theretofore, and making the judgment debt a charge in equity upon the debtor's lands, proceeded to enact, that no judgment should, by virtue of that act, affect any lands, tenements, or hereditaments, unless, and until, a memorandum, containing the name, residence, and profession of the person whose estate is intended to be thereby affected, and the court and title of the cause in which the judgment should have been obtained, and also the date and amount of the debt recovered, should be left with the senior master of the Court of Common Pleas, who should enter the same by the name of the person whose estate was intended to be thereby affected by the judgment; and by the statute of 2 V. c. 11, it was enacted, that no judgment should thereafter be docketed under the provisions of the 4th and 5th Wm. & Mary, but that all such dockets should be finally closed without prejudice to the operation of any judgment already docketed and entered under the said act.

It was contended, in the affirmative, that, as the statute 2 V. c. 11 abolished altogether the system of docketting under the statute of Wm. & Mary, the effect of these enactments was, that a judgment recovered subsequently to the passing of the act would be entitled to precedence, as at common law, in the administration of assets, by an executor or administrator, notwithstanding, it neither be registered, as prescribed by the statutes of Vic., or docketed, as required by the statute of Wm. and Mary; because, it is no longer possible to docket a judgment under the statute of Wm. & Mary, and the only penalty imposed by the statute of Vic. for neglect to register, is that it shall not affect any lands, tenements, or hereditaments, as to purchasers, mortgagees, or creditors.

The question was decided in the affirmative.

NOTE.—Since the discussion on the moot point, the case of *Fuller v. Redmas* (7 W. R. 430) has been reported, which confirms the decision arrived at by the Society.

MOOT POINT, No. 266.

Is a creditor's claim against a surety affected by the release to the principal debtor of securities obtained from him subsequent to the contract of suretyship?

Newton v. Chorlton, 10 Hare, 646; *Lake v. Brutton*, 18 Bea. 34; *L. J.*, 1854, Ch. 294; *S. C.*, on appeal, *L. J.*, 1856, Ch. 842; *Wade v. Coope*, 2 Sim. 155; *Young v. Reynell*, 9 Hare, 809. The meeting decided in the negative, but that in the event of the question being again litigated, the decision of Vice-Chancellor Wood, in the case of *Newton v. Chorlton*, would be overruled, and the affirmative established.

JOSEPH ANSELL, Junior,

Corresponding Secretary.

LEWIS ON PROFESSIONAL SUCCESS.

MR. W. D. LEWIS, Q.C., and formerly Lecturer on Real Property Law at Gray's Inn, has recently read, at a meeting of the Juridical Society, a paper on Professional Success, from which we propose to extract such portions as are likely to be of interest to our readers:—

“1. The first condition of success which I am disposed to suggest for your consideration, is, that a man should, in his estimate of the profession, thoroughly identify his vocation with the *public good*. He should be satisfied, not only that it may be reconciled with the good of the public, but that in its nature and tendency it directly contributes to it. Such a conviction will prove both a stimulus to exertion and a security against backsliding. Every detail of business, viewed in this light, will be invested with an interest, and supplied with an incentive to its due discharge, far beyond any that the mere desire of the acquisition of wealth could furnish. Taking such a view, the practitioner regards his avocation, as a whole, having certain relations to the other interests of society, and does not allow himself to dwell on isolated details of an uninteresting, or it may be repulsive character, as indicating his occupation to be mere drudgery. I grant that it is often very difficult to maintain in its vitality such a conviction as I have here suggested. Any one coming fresh from such a contemplation into one of our courts of justice, while a wrangle as to costs is going on, would be tempted to distrust his principle, and might find his faith wavering. So, again, a man who in the architecture of a deed allowed himself to dwell exclusively or very intently on the 5s. consideration, or on the form of the habendum, might be induced to conclude that draftsmanship was mere technicality without principle, and altogether incapable of being connected with any question of the public interest.

“But in almost every pursuit, it must inevitably happen that there are certain remote and obscure details, which do not very obviously partake of the spirit and character with which the pursuit is in the main animated. The public good is promoted by the maintenance of a body of men specially instructed in the laws—by their being set apart to attend or assist in the administration of those laws—by a division of labour amongst this body, and each individual who participates in this labour may legitimately feel that the healthy action of the laws is in part attributable to the professional system in which he has a share, and under the sanction of which he devotes himself to the forum or the consultation chamber.

“2. In order that a man's practice of his profession may preserve its true dignity, he must constantly keep in view the *scientific* character of it, deeming himself a professor of the science, and not the practitioner of an empirical art merely. There is ample room in almost every transaction for giving effect to and carrying out this principle. Quite consistently with this the practitioner may render due attention to that which in each

particular instance is the chief personal aim, namely, the interest of the client who commits his concerns to the advocate's or the counsel's care and protection. Every argument may be conducted, every bill drawn, and every deed framed, with an eye to the precision and purity of the doctrines of law, and their just and true relations to one another, as well as with a regard to the particular result sought to be obtained in the case which is in hand. It may well be that in particular instances a ruder form, or a rougher conclusion, would equally well consist with the mere personal interest of the client; but this is not all which the practitioner is pledged to regard. He owes a duty to the law as a whole, to the body of its professors, of whom he is one, and to the students upon whom will devolve the development of this science in after times. We ought, therefore, to bear in mind the admonition of Bacon, who on this subject says—'Another error is, that after the distribution of particular arts and sciences, men have abandoned universality, which cannot but cease and stop all progression; for no perfect discovery can be made upon a flat or level, neither is it possible to discover the more remote and deeper parts of any science, if you stand upon the level of the same science, and ascend not to a higher science.' So in another place, he remarks—'Other errors there are, in the scope that men propound to themselves, whereunto they bend their endeavours; for whereas the more constant and devoted kind of professors of any science ought to propound to themselves to make some additions to their science, they convert their labours to aspire to certain second prizes; as to be a profound interpreter or commentator—to be a sharp champion or defender—to be a methodical compounder or abridger; and so the patrimony of knowledge cometh to be sometimes improved, but seldom augmented.'

"I assume, that before a meeting like the present, it is not necessary to establish the proposition, that the law of England consisting, as it does in a large measure, of elementary and well-defined principles, by which it determines the great majority of individual cases, realises, in its internal working and in the arrangement of its parts, the conditions of a science, admitting at the same time, however, as we must, inasmuch as there are principles belonging to it of indeterminate operation, and since (like all other national law) it has many arbitrary provisions for special cases, which cannot be classified as theories, it is a *mixed science*, as distinguished from one that is *pure*.

"Consequent on the view, however, which we have been taking of the scientific character of our law, we have dangers to guard against, and duties to be mindful of. The tendency is sometimes seen in the professors of a science, to make the science conform to an outline and an argument of their own, rather than to follow, in their conceptions, the actual course of the science. There is a disposition to force everything into the support and confirmation of the theory, though there be heterogeneous instances which, if duly examined, would prove its unsoundness. Like Wingate, who, wishing to reduce all the law to propositions of reason, set out with his

maxims, and then marshalled, as seemed most fitting and convenient, the instances with which the law furnished him.

"But I conceive the *opposite* of this danger is that to which *we* are most prone. We are eager to discover *differences* rather than resemblances between the cases and their principles. We readily embrace an exception if we can, forgetting that, by persisting in such a course, we may by the means of causing irreparable injury to the scientific character of the law. We are multiplying (perhaps needlessly) the special individual rules of our system, and sacrificing the advantage of a well-ordered, clearly defined, and yet comprehensive series of doctrines. This evil is augmented seriously when (as sometimes happens) the judge seeks occasion or opportunity to decide a case upon exceptive considerations, as if fearful of holding up to the light of examination the theory which would have embraced it. It is the lamentable effect of this method of viewing legal questions, that, as fast as it solves one question, it breeds others. I would place before all who do not sufficiently bear this in mind, the illustration of Bacon—'Were it not better for a man in a fair room, to set up one great light or branching candlestick of lights, than to go about with a small watch-candle into every corner?' There is no lack of bright examples to show us the true way; for is not the pleasure derived from a perusal of the judgments of Sir W. Grant, Lord Stowell, Sir Thomas Plumer, or Sir N. Tindal, to be ascribed to their eminently scientific character?

"3. Another very important condition on which, as it appears to me, the success, as well as the comfort, of a man's practice of the profession depends, is, that he should not allow himself to suppose this pursuit incompatible with a just and refined *taste*. We have, indeed, heard of persons abandoning the practice of the law, from a notion of its being offensive to their sensibilities as highly educated men. Such persons, I assume, take a dislike to the technicology, the artificial forms, and the artistic subtleties, to which they are obliged to conform themselves. They think, or fancy they think, that the details of legal business involve an ignoble and unworthy drudgery, to accommodate oneself to which must be an offence to educated taste, and inconsistent with the refinement derived from familiarity with literature and the classics.

"It is easy to conceive that, if a man sets out in the practice of his profession with such an anticipation of the fate to which it condemns him, he will never heartily employ himself in it, and will never give himself a fair opportunity of so developing his energies as to meet with success. There will be a constant drawback, restraining and forbidding the necessary cordiality of effort; and the want of success to which this may contribute will consummate his alienation and disgust.

"I cannot but think that a view such as that I am now adverting to, proceeds from a want of attention to the actual occasions and opportunities which legal avocations really present for the gratification of the most educated judgment and the most refined taste. The persons to whom I refer are not in a position to condemn the law as rude or uncouth until they

have fairly tried by experience whether the tastes they take pride in may not, without any exceptionable singularity, be indulged in many departments of legal practice which they will find readily open to them. I have no doubt, for example, in the matter of composition, that there are some present who have had opportunities of observing (as I have) specimens of legal draftsmanship, calculated in every way to elicit admiration, tried even by the most strict literary and philosophical rules. Conveyancers, dead and living, I have known, whose drafts have been models of well-chosen language, terse expression and orderly arrangement of parts, as well as of intellectual grasp and scientific exactness. Let a man but give himself the chance, and he will find that even in so apparently repulsive (or at all events uninteresting) an engagement, as the preparation of a deed, he may find means of largely turning to account his literary acquirements. Is there no satisfaction in reducing from a confused and complicated state of facts a lucid and orderly narrative, logical in arrangement, and simple and even natural in its language? How great is the pleasure experienced upon concluding the preparation of some lengthened instrument, providing by anticipation for alternative events and changing circumstances, to discover, upon examination, no incongruity, no obscurity of intention or of terms, and no possible case unprovided for;—to observe among the provisions themselves, in their mutual relations, a due subordination of parts, and a facile, luminous, and persuasive arrangement. Precisely the same satisfaction may be enjoyed in the preparation of a pleading, in which a selection is to be made of material facts, but such only as are material, and in which even the order and manner of the statement may of itself lead to and suggest the claim which is to be built upon it, in conformity to the same rules of composition which would be observed in the arrangement of a literary treatise. If we refer to the opportunities afforded by the more public exercises of the advocate, the groundlessness of the supposed repugnancy of law and refinement becomes still more manifest.

“4. Next, I am not ashamed to avow, that in my view a considerable measure of earnestness, and even enthusiasm, is desirable in the practice of our profession. It seems to me that many times men wish to accomplish things, and even heartily desire them, and yet withhold that energetic action which is usually supposed to show a determination to secure the object in view. If the result in question be worth accomplishing at all, it seems to me that in general the best, and indeed the only rule is, to act for the time, and in the particular case, as if it were the only thing one desired to accomplish—as if, in fact, one regarded and sought after nothing else. To be possessed with an exalted and even an exaggerated view of the importance of what one is engaged in—to think of failure in it as a grievous alternative, and insupportable—and to attend to all the collateral incidents and little things which may insure success—these appear to me to form a method of proceeding which, even at the risk of a charge of enthusiasm, a man engaged in the profession of the bar need not be ashamed to avow.

“‘Let us recognise,’ says an American writer, ‘the beauty and power of

true enthusiasm, and, whatever we may do to enlighten ourselves and other, guard against checking or chilling a single earnest sentiment. For what is the human mind, however enriched with acquisitions or strengthened by exercise, unaccompanied by an ardent and sensitive heart? Its light may illumine, but it cannot inspire. It may shed a cold and moonlight radiance upon the path of life, but it warms no flower into bloom; it sets free no ice-bound fountains.'

"Consider, again, how true energy will exhibit itself in all the minor details which pertain to professional life! A writer, who is known only as a 'Fellow of a College,' in a pamphlet entitled 'Self-formation; or, the History of an individual mind,' well illustrates the truth, that there is nothing so trivial, but that an energetic spirit may find its account in condescending not to overlook it. This writer, adverting to an energetic resolve which he formed on a certain occasion, of always keeping his mind occupied with some definite subject, and remarking that he found the excellence of the practice—adds, that thenceforth '*I made a point of everything*: I was active, brisk, and animated in all things that I did, even to the picking up of a glove, or the asking the time of day.' If I ever felt the approach of languor, I said at once within myself, in the next quarter of an hour I will do such a thing, and it was done, and much more.' And subsequently he says,—'do what you will, only do something; and that actively and energetically.'

"5. Next, I would take leave to observe that a *love of work* in itself, and for its own sake, is a very wholesome and desirable feeling to cultivate. It secures equanimity and cheerfulness—is a preservative against listlessness—and makes provision for the case which sometimes arises, of an unexpected pressure of engagements and conflicting demands upon the attention. The mere fact of having laboured hard, whether in pursuance of some self-imposed task, or in obedience to strict professional claims, is generally, I think, a source of positive enjoyment in the pleasurable reflections to which it gives rise. The feeling to which I advert is that which Dr. Arnold's biographer testifies to when he says, that Arnold had an unfeigned regard for work of all kinds. We are told of the sense he had, of its value, both for the complex aggregate of society, and the growth and perfection of the individual. He goes on to add, that by this pupils of the most different natures were keenly stimulated; none felt that he was left out, or that, because he was not endowed with large powers of mind, there was no sphere open to him in the honourable pursuit of usefulness.

"6. One other quality remains, to which I would beg leave to advert, as especially serviceable in our profession, valuable as it must always be in any—I mean the determination to regard nothing in business as *impossible*. As a theory, most persons, I have little doubt, would declare their adherence to this proposition; but I beg to submit, that, practically, there is ground for believing this to be not a sufficiently abiding reality amongst us. We too soon succumb to a difficulty, as amounting in substance to an impossibility. I can from experience, however, declare it to be a most

valuable principle of action to assume nothing impossible ; and if a man will only take this for his rule, he will many times be carried further in his removal of difficulties by the mere fact that he has made trial of his task, which, perhaps, without this conviction he had not attempted.

“ ‘ Nothing is impossible,’ says La Rochefoucauld, ‘ there are ways which lead to everything ; and if we had sufficient will, we should always have sufficient means.’ Lord Brougham, too, let us never forget, declares the word ‘ impossible ’ to be the mother-tongue of little souls.

“ If there be here any gentleman who as yet is but a student of the law, or is only now entering the outer porch of the profession, I trust I may, without offence, conclude with reminding him of the great words of Horace :—

“ ‘ Qui studet optatam cursu contingere metam
Multa tulit fecitque puer, sudavit et alsit
Abstulit Venere et vino.’—*De Art, Poet.* 412.”

ARTICLED CLERKS' BILL.

The Lord Chancellor has introduced a bill into the Lords, having for its object to regulate the service, examination, and admission of articulated clerks, which also contains some provisions relative to solicitors' certificates, striking them off the rolls, bills of costs carrying interest from taxation, entry of articles of clerkship, commissions to take oaths, acknowledgments of married women, &c. The more important of these provisions to most of our readers, are those relating to the status of articulated clerks. In the first place, the bill removes the restriction confining the benefit of university degrees to a certain limited time after taking them, but it does not appear to give the privilege to a master of arts (4 L. C. 180), nor does it allow such articulated clerk to serve any portion of his time to a barrister (Pract. Com. L. 15). Secondly, it is provided, that a successful candidate, at what are termed the middle class examinations of the universities of Oxford and Cambridge, shall be exempted from one year's service in articles, and thus be entitled to admission at the end of *four* years. Thirdly, provisions are contained in the bill, empowering the judges to make regulations for an examination into *general knowledge*, before or after the articling of clerks who have not obtained degrees, or passed through any university examination. Fourthly, as to the examination of articulated clerks bound to county palatine solicitors. These are all very important matters in relation to articulated clerks and solicitors, and as the bill appears to meet with universal approval (with a few proposed additions), there seems little doubt it will very shortly become law. In the meantime, we present a short abstract of the provisions above referred to, as the means of preparing the profession for a new state of things. It is provided, that sec. 7 of the 6 & 7 V. c. 70 (the Solicitors' Act), shall be repealed, “ and any person having taken the degree of bachelor of arts, or bachelor of laws in any of the universities of Oxford, Cambridge, Dublin,

Durham or London, or in the Queen's University in Ireland; and also at any time after having taken such degree, and either before or after the passing of this act, has [*sic*] been bound by, and has duly served under, articles of clerkship" to a practising solicitor for the term of three years, and has been examined and sworn, may be admitted and enrolled, and service for not exceeding a year of the term with the London agent shall be good service; and where any person has, before the act, and after taking such degree, been bound for five years, he may, after having served three years and been examined and sworn, and with the consent in writing (indorsed on his articles) of the solicitor, be admitted and enrolled, and the articles shall be deemed to have determined as by effluxion of time. The Chief Justices, and the Chief Baron, with the Master of the Rolls, may by regulations direct that any persons having passed any examination already established at Oxford or Cambridge for non-students, or any other examination of a similar nature (to be specified in such regulations) hereafter established in any of the above universities, may be admitted and enrolled after having been bound by and served under articles for four years and been examined and sworn. Sec. 6 of 6 & 7 V. shall apply to any person bound, under the said regulations, for four years (2—4).

The Chief Justices, and the Chief Baron, with the Master of the Rolls (or any three of them, of whom the Master of the Rolls is to be one), may make regulations for the examination "in such branches of general knowledge as they may deem proper," of all persons (not having taken degrees or passed a university examination as aforesaid) hereafter becoming bound by articles, and may require such examination to be passed either before persons become so bound, or at any time before their admission, and may appoint examiners; every person required to pass must obtain from the examiners a certificate of having satisfactorily passed; provided that the judges, or any one or more of them, may, under special circumstances, dispense with compliance with the regulations (5).

An articulated clerk, now or hereafter bound, must not hold any office or engage in any other employment, save as by the 6 & 7 V. otherwise provided; and, before being admitted, he must prove by affidavit, under sec. 14 of that act, that he has not done so (6).

The examination under 6 & 7 V. or this act, shall be deemed to include such examination "touching his fitness and capacity to act in matters of business usually transacted or performed by attorneys or solicitors," as the examiners deem proper, subject to any rules to be made under 6 & 7 V. (7).

Articled clerks now or hereafter bound to attorneys of the palatine courts must, before admission for those courts, have been examined for the Superior and Chancery Courts, to the satisfaction of the palatine judges (8).

Articles and assignments are, within three months after enrolment and registration, to be produced to the registrar, who is to enter the name, date, and term of service in a book, and mark the contract, upon a fee of five shillings and the book is to be open to public inspection; and in case of non-production within the three months, the service is to commence from the date of production, unless a court shall otherwise order (22).

Summary of Decisions.

CONVEYANCING AND EQUITY.

CHARITABLE TRUSTS ACT.—*Dissenting chapel—Jurisdiction.*

Where it appears to be for the benefit of the estate that an old dissenting meeting house shall be sold, and the proceeds applied in building a new one, the Court of Chancery has a general jurisdiction, as well as under 52 Geo. 3, c. 101, to alien such property. *In re North Shields Old Meeting House*, 7 Week. Rep. 541.

CHARITY.—*Surplus income—Application—Doctrine of cy près.—*

Where a testator directed the income of property to be divided amongst six alms-women, and the income had greatly increased, the court directed the surplus to be applied in establishing schools in a town with which the testator had been connected in preference to the extension of that or the other charities founded by his will (see *Philpot v. St. George's Hospital*). *Re Ashton's Charity*, 33 Law Tim. Rep. 195.

CHOSE IN ACTION.—*Assignee for value—Bankruptcy—Notice—*

Priority between particular and statutory assignees.—The consequences of the neglect to give a notice on the assignment of a chose in action are exemplified by the following decision:—E. has a reversionary contingent interest in personalty jure mariti, and assigns such interest by way of mortgage, becomes bankrupt, and the interest then falls into possession. In the absence of notice, either by the particular or statutory assignee, the right of the latter must prevail. *In re Vickress's Trust*, 7 Week. Rep. 542.

COPYHOLDS.—*Custom for first copyhold tenant for life, who pays the fine upon admission, to bar the estates of succeeding lives—Effect of alienation of the manor upon such a custom—Common law conveyance by the first tenant for life to the alienee of the manor.*—A custom for a joint tenant for life of a copyhold who pays the fine upon admission, and takes for the life of himself and two others successively according to the custom of the manor, to hold to himself and the two others for their lives, and the life of the longest liver of them successively according to the custom of the said manor, to bar the successive estates for life, whether he takes for the three lives or they take in succession by a surrender to the lord in the ordinary form, is a good, lawful, and valid custom; and where the manor has been alienated by the lord, the tenant can release his interest to the alienee by a common law conveyance. *Phillips v. Ball*, 33 Law Tim. Rep. 222.

EVIDENCE.—*Pedigree—Hearsay evidence.*—Hearsay evidence is admissible in case of pedigree, being statements of living witnesses as to that which they have heard persons now deceased say with respect to the pedigree of their family; they being proved aliunde to be members of that family by extrinsic evidence. Although the court will admit hearsay evidence in cases of pedigree, it looks at such evidence with great jealousy,

the parties giving it being interested witnesses ; but discrepancies may go to confirm the truth of such statements. *Bauer v. Mitford*, 7 Week. Rep. 570.

HUSBAND AND WIFE.—*Separation deed*—*Public policy*—*Two deeds arising out of the same circumstances deemed to be independent.*—A deed of separation and a deed of settlement were executed in pursuance of an award. The former contained some provisions as to the custody of the children contrary to public policy, and the Master of the Rolls, being of opinion that both deeds constituted one transaction, held both void. On appeal : Held, that though both sprang out of the same circumstances, and were executed in pursuance of the same award, the deed of settlement was independent, and that an annuity under it was absolutely payable. *Crouch v. Waller*, 7 Week. Rep. 523.

INTERPLEADER.—*Landlord and tenant*—*Interpleader by lessee.*—A lessee cannot sustain a bill of interpleader unless he has been embarrassed by some act of the lessor after the granting of the lease, or by some demand made upon him for rent consequent upon such act. *Cook v. Rosslyn*, 7 Week. Rep. 537.

JUDGMENT CREDITOR.—1 & 2 V. c. 110—*Not entered up for a year, enforcing.*—By the 1 & 2 V. c. 110, s. 13, a judgment is made equivalent to a charge with a proviso that no judgment creditor shall proceed in equity to obtain a benefit of such charge until after the expiration of one year from the time of entering up the judgment. It has, however, been decided that a judgment creditor is entitled, before the expiration of a year from entering up judgment, to an injunction to restrain trustees of an estate for the judgment debtor for life from paying the rent to him. *Yescombe v. Landor*, 7 Week. Rep. 534.

MORTGAGE.—*Mortgagor and mortgagee*—*Redemption*—*Priority*—*Tacking*—*Trust*—*Notice.*—Any person holding an unsatisfied mortgage or charge, may, at any period, convey the legal estate in respect of his unsatisfied mortgage to any subsequent incumbrancer who may have advanced his money without notice of any intervening incumbrance, and he may by so doing give a benefit to such other incumbrancer, of which a court of equity cannot deprive him—viz., a right to insist upon that legal estate which he has thus properly acquired. In the case of a satisfied mortgage, or in the case of a trustee of a satisfied term having notice of all the previous intervening incumbrances, there is not any case where a person, holding as trustee of any legal estate, and fixed with notice, has been allowed to convey that estate after he has had notice, or to give to another a security which he only obtained by committing a breach of trust. *Maundrell v. Maundrell* (7 Ves. 567) ; *Saunders v. Dehew* (2 Vern. 271) ; and *Allen v. Knight* (Hare, 272) ; have determined, that where there is an express declaration of trust, the trustee cannot convey the trust property otherwise than as he holds it—viz., fettered and accompanied by the trust upon which the estates are held (see the judgment in *Carter v. Carter*, 3 K. & J. 640). In the following case it appeared that A. covenanted to convey property immediately after

his marriage upon certain trusts for the benefit of the children of the marriage, and in the meantime, and until such conveyance, to stand possessed of the property upon the same trusts. No conveyance was ever executed, and A. mortgaged the property to B., C., & D. successively, suppressing all notice of the trusts contained in the deed of covenant. The legal estate of the mortgaged property became vested by successive transfers in D. : Held, that D., who had obtained the legal estate without notice of the trust in favour of the children of the marriage, was entitled to hold the legal estate as against those cestuis que trust until the whole of his debt was satisfied. A first mortgagee, taking without notice upon his mortgage deed of any trust affecting the property, is entitled to transfer the mortgaged estate to any subsequent incumbrancer who will redeem him, and such subsequent incumbrancer can avail himself for all purposes of that legal estate acquired by him *bonâ fide* without notice of any trust. *Bates v. Johnson*, 7 Week. Rep. 512.

MORTGAGE.—*Priority—False representation by trustee of fund—Trustee—Stamp—Notice to trustees.*—Where a fund on interest is held in trust, and the cestui que trust makes an assignment by way of a mortgage, the assignee, in order to protect himself, must either give notice to all the trustees or obtain a stop order. If a trustee of a fund makes a false representation to an assignee, he is personally responsible. Notice of an assignment of an interest in a fund may be given at any time, and lapse of time only is not sufficient to ignore its existence. A formal notice of an assignment to a beneficiary in a trust fund, being also a trustee, is unnecessary; any species of notice is sufficient, written or verbal, except a casual observation, which is not sufficient. Notice to a beneficiary in a trust fund, being also a trustee, who encumbers his share, is not sufficient to protect an assignee. Notice of an assignment to a trustee, who is also assignee, is sufficient notice. A document must be stamped to make it receivable as evidence in a court of equity; but when once stamped it becomes valid *ab initio*. *Browne v. Savage*, 7 Week. Rep. 571.

POWER.—*To appoint among children—Fraudulent execution—Married women.*—Where a discretionary power given to a married woman to appoint among her children is executed by appointing the whole to one, and there is evidence to prove that such appointment was made upon the agreement that such child should hand over half the sum appointed to her father, and give him a life interest in the remainder, such appointment is void as a fraud on the power, although the arrangement is never communicated to the appointee. Where an appointment is valid on the face of it, if it can be proved that the exercise of the power is not an honest one, but tending to defeat the object, the Court of Chancery will declare it to be void as a fraud upon the power. Where an appointment is in fraud of a power there is an important distinction between the case of defeating the objects of the power, and those to take in failure of those objects. *Re Marsden's Trusts*, 7 Week. Rep. 520.

SHIP.—*Mortgage—Charter-party—Specific performance—Notice—Injunc-*

tion—17 & 18 V. c. 34.—The Court of Chancery will not decree specific performance of a charter-party, yet it will restrain the employment of the chartered vessel for a purpose different from that which was agreed, even though such employment is not expressly forbidden. *De Mattòs v. Gibson*, 7 Week. Rep. 514.

SOLICITOR AND CLIENT.—*Mortgage—Promissory notes—Settlement of an account not stated—Inquiry—Costs.*—A mortgage of freehold hereditaments was made by the plaintiff to the defendant, his solicitor, to secure two sums of money and interest. Of these the larger sum was by several items, an account of which was stated and shown to the defendant at the execution of the deed. One of the items was for professional charges, as to which no bill of costs was tendered to the plaintiff. As to another item, an erroneous statement as to the payment of the sum therein expressed was made by the defendant on the pleadings, and afterwards corrected by him. It was admitted that, as to these two items, the deed could stand as a security for such an amount only as should be found to be justly due to the defendant. Two other items were in respect of sums secured by two promissory notes in favour of the defendant, signed by the plaintiff, on two former occasions, with interest. It was proved that, on the occasion when the first of these two notes was signed, a memorandum was also signed by the plaintiff to the effect "that an account had been that day settled of all the notes of hand held by the defendant of the plaintiff, and a balance was found to be due." It was not, however, recited or proved in evidence that any statement of accounts had been drawn up between the plaintiff and the defendant at the time of signing the second note; it was alleged by the defendant, that the plaintiff, having again become indebted, a fresh settlement of accounts was made: Held, that the notes could not be held to be *prima facie* evidence that the sums mentioned in them were due, and that as to these two items as well as the former, there must be an inquiry of what was justly due and a declaration that the deed could stand as a security for such amount only, with costs up to the hearing to be paid by the defendant. *Davis v. Parry*, 33 Law Tim. Rep. 197.

TRUSTEES.—*Employment of trust moneys in trade—Liability of trustees under a will—Entries in account—Compound interest.*—A representation, which admits of being made good by the maker of it, will be binding upon him. Therefore an entry in an account by trustees under a will crediting a legatee with the amount of her legacy, is binding on them when it is made knowingly, and there is nothing to show that it was done in error. If trustees under a will use, for the purpose of their own trade, trust moneys, which, according to the directions of the will, they ought to have otherwise invested, in a decree against them directing an account, compound interest will be charged. *Townsend v. Townsend*, 7 Week. Rep. 529.

VOLUNTARY SETTLEMENT.—*Marriage settlement impeached on the ground of its being a fraud against creditors—Evidence of fraud—Restitution.*—The following decision, establishing the validity of a settlement made on the marriage of a trader, who was then in embarrassed circumstances, has

given rise to some animadversions by persons who do not seem to have been aware that it is quite consistent with prior authorities. As stated by Vice-Chancellor Stuart, "So far as the settlement includes property of the bankrupt himself, unless it can be supported by the consideration of marriage, the evidence of the embarrassed state of his affairs is so strong that it will not stand. But it is the policy of the law to give paramount force to the consideration of marriage. Unless the marriage itself be a mere fraudulent contrivance for defeating creditors, the doctrine both at law and in equity has been to support a settlement of the husband's property when it appears to have been made previously to, and in consideration of, an honest marriage, and this, notwithstanding the embarrassed circumstances at the date of the settlement, and even where the wife has contracted the marriage and obtained the settlement with the full knowledge of the husband's embarrassments. In the present case there is evidence to prove that the wife was fully cognisant of the pecuniary difficulties of the husband, and had even concealed him in her house to avoid his creditors. But it was held in the case of *Campion v. Cotton* (17 Ves. 268), that where the settlement was made previously to and in consideration of marriage, the embarrassed circumstances of the husband, and the fact that the wife knew that he was embarrassed, were not enough to invalidate the settlement." It appeared that by the settlement, which was made previous to, and in consideration of, marriage, after reciting that the intended wife had advanced for the use of the intended husband several sums of money, amounting, according to an account that day stated, to £1000, secured by the joint and several promissory notes of the intended husband and another person, certain freehold hereditaments of which the intended wife was seised in fee, subject to mortgages, and certain freehold hereditaments and leasehold premises of which the intended husband was seised and possessed, subject to mortgages (being very nearly all his property), were conveyed and assigned to trustees upon trust to sell freed from the mortgages, and to invest the proceeds, and hold the fund, together with the promissory notes, upon trust during the joint lives of husband and wife for the wife for her separate use, but not so as to deprive her of the benefit thereof by anticipation; and after the husband's decease, in case she should survive, for the wife for life; and after the wife's decease, in case he should survive, upon trust for the husband for life until he should be declared bankrupt or become insolvent, or make any assignment for the benefit of his creditors, &c., with trust for the benefit of the children of the marriage. At the time of his executing the settlement the husband was greatly embarrassed; the wife knew of his pecuniary difficulties, and had concealed him in her house to avoid his creditors. It was shown also that the marriage engagement had been of long standing, and had been postponed in consequence of a chancery suit. After the marriage, the husband was adjudicated a bankrupt, the date of the act of bankruptcy proved against him being subsequent to the marriage. The assignees filed a bill alleging divers previous acts of bankruptcy, and

amongst others the execution of the deeds of settlement, and prayed that the deeds might be set aside as fraudulent and void so far as they relate to the property settled by the husband: Held, inasmuch as the evidence showed that the marriage had been contracted *bonâ fide* on a long previous engagement, and not for any fraudulent purpose, that the plaintiffs were not entitled to the relief prayed, and bill dismissed with costs. Unless the court finds that the ceremony of marriage has been resorted to as a pretence and cloak for fraud, and finds clear evidence that it is a fraudulent marriage, there is no case in which a settlement executed in consideration of marriage has been set aside on the ground of insolvency or embarrassed circumstances, or as being a fraud against creditors. But where, as in *Colombine v. Penhall* (1 Sim. & Gif. 228), the marriage is dishonest, and the primary purpose of it was not to obtain the status of marriage on an honourable contract, but to secure the continuance of cohabitation for the settlement of property, the ground on which the high value of marriage is rested entirely fails. *Frazer v. Thompson*, 33 Law Tim. Rep. 219.

WILL.—Construction—Legatee—Gift to A. and her children.—A testator directed that all his legatees should contribute one per cent. out of their legacies to A. and her children: Held, that specific and residuary legatees and annuitants were liable to contribute. Held, also, that A. took a life estate, with a power of appointment among children, with remainder, in default, to the children equally. *Ward v. Gray*, 7 Week. Rep. 569.

WILL.—Married woman—Alleged power—Execution of power—Barnes v. Vincent (5 Moore, P. C. 201).—B. died in 1857, leaving a testamentary paper in her own handwriting, and signed by her, dated July, 1832, by which she bequeathed her whole property, whatever it might be at her death, to her daughter. Under articles of a marriage settlement, the trustees held certain property in trust for B.'s separate use during coverture, and after her decease for such persons as B. should by her last will, by her signed, and published in the presence of and attested by three witnesses, appoint. In July, 1832, B.'s husband was alive, but predeceased her. The testamentary paper contained no reference whatever to the power, and was not published or attested. In the pleadings the plaintiff alleged that it was made in pursuance of a power, and the marriage articles giving some power were not disputed: Held, that *Barnes v. Vincent* (5 Moore, P. C. 201), was conclusive, that where a power is before it, and an averment that a testamentary paper was made in pursuance of a power, the Court of Probate is bound to grant probate of the paper, provided it is valid as a testamentary instrument, without examining into the due execution of the power, and thereby to leave it to the competent court of construction to decide whether the testamentary paper is a due execution of, or operative under the power. *Chatelain v. De Pontigny*, 7 Week. Rep. 497.

EQUITY PRACTICE.

DISCLAIMER.—Co-defendants—Question between.—The Court of Chancery will not decide upon the rights of co-defendants unless such decision

is necessary in order to decide the right of the plaintiff, or where the court is satisfied that no further evidence can be produced as to the co-defendants' rights. But in this case, one of the defendant's having put in an absolute disclaimer, the court decided in favour of the co-defendant, though possibly a question might arise as between him and the disclaiming defendant. Where, therefore, it is intended that a disclaimer should be absolute as against the plaintiff only, the defendant disclaiming should reserve his rights in the subject matter of the suit as against co-defendants. *Jolly v. Arbutnot*, 7 Week. Rep. 532.

EVIDENCE.—*Publication*—*Closing evidence*—*Sec. 38 of the 15 & 16 V. c. 86.*—The time for closing evidence contemplated by the Chancery Improvement Act (15 & 16 V. c. 86, s. 38), is the time limited for closing evidence in chief, and the subpoena to hear judgment may be issued at any time within four weeks after such closing evidence. The latter part of the 38th section of the 15 & 16 V. c. 86, applies only to affidavit witnesses, whose cross-examination may take place after the evidence is closed. An application to dismiss a bill for want of prosecution, after the closing of the evidence, but pleading the cross-examination of affidavit witnesses, cannot be entertained. Motion to grant subpoena to hear judgment, and to strike the cause out of the paper, on the ground that the evidence under the new practice is not closed until after the cross-examination of affidavit witnesses, refused with costs. *Lawson v. Solomon*, 7 Week. Rep. 577.

MORTGAGE.—*Equitable mortgage*—*Sale*—*Costs.*—Where an equitable mortgagee files a bill simply to realise his security against the infant heir of the mortgagor (a vesting order having been obtained), the fund being deficient, the defendant is only entitled to such costs as were incurred by the proceedings under the Trustee Act. *Wade v. Ward*, 7 Week. Rep. 542.

PETITION.—*Leave to amend refused where order made, but not drawn up.*—Where an order had been pronounced upon a petition, but not drawn up, the court refuse leave to amend the petition. *Re Keen*, 33 Law Tim. Rep. 218.

SETTLED ESTATES.—*Altering order made under Leases and Sales of Settled Estates Act*—*Power of leasing.*—An order made under the Leases and Sales of Settled Estates Act, vesting leasing powers in trustees, was subsequently altered before the same was drawn up by adding a direction that all leases to be granted pursuant to such powers should be settled by the court. *Re Jones's Settled Estates*, 7 Week. Rep. 523.

STOCK.—*Transferred to commissioners for reduction of National Debt*—*Survivorship*—*Sum of stock*—*Legal title.*—A sum of stock purchased in the names of A., B., and C., in the year 1806, but which had been transferred to the Commissioners for reducing the National Debt in consequence of no dividends having been required for twenty-one years, was ordered to be transferred, and the dividends to be paid to C., the sole survivor, on his petition, as he made out a clear legal title and a probable beneficial interest. *Exp. Bouts*, 7 Week. Rep. 512.

WITNESS.—*Payment to—Professional man—Taxing masters—Orders of* 1854.—A country gentleman, being subpoenaed as a witness, and brought to London, is entitled to his travelling expenses, and one guinea per day for hotel or lodging whilst in town. A professional man, if subpoenaed as a witness, must, in the absence of evidence, be assumed to be practising his profession, and is entitled to one guinea per day for loss of time, besides cab-hire, if he resides in London. It is not the province of the taxing master to deal with any but ordinary costs; any other question which arises must be dealt with by the Court of Chancery. The 14th Order of the 1st of June, 1854, does not impose upon the court the office of considering the amount of portions of items for costs. *Turner v. Turner*, 7 Week. Rep. 573.

COMMON LAW.

CONTRACT.—*Construction of—Condition precedent—Pleading.*—Declaration upon an agreement, whereby the plaintiffs agreed that, upon payment to them by the defendants of certain sums on certain specified days, they would grant to the defendants a lease of certain premises, and the defendant agreed to accept such lease. Averment, that all things had happened to entitle the plaintiffs to be paid; breach, that the defendants had not paid: Held, on demurrer, a good declaration; that the granting lease by the plaintiffs was not a condition precedent to the payment of the money by the defendants. *Baggalay v. Pettit*, 28 Law Journ. Rep. C. P. 169.

CONTRACT.—*Written contract—Evidence to apply—Effect of that evidence—Excess.*—The defendant, a wool buyer, purchased of the defendants, sheep farmers, a quantity of wool, described simply as "your wool." A previous conversation had taken place between the parties, in which the plaintiffs had stated that, besides their own clip of wool, they had purchased the clips of four or five neighbouring farmers, whose names were specified, and that altogether the quantity amounted to "2,300 stones, or 100 stones more or less." Held, in an action against the defendants for not accepting the wool, that evidence of this conversation was admissible to explain what was meant by the term "your wool." Held, also, per Campbell, C. J., and Erle, J., that this conversation was not thereby made a part of the contract, so that the quantity specified became an ingredient in the contract, and that the contract was performed by the plaintiffs sending all the wool which they then had, amounting to 2,505 stones. Wightman, J., dissentiente. Semble, per Erle, J., that even if the quantity mentioned was a part of the contract, that it was a question for the jury, whether or not the excess was unreasonable. *Macdonald v. Longbottom*, 7 Week. Rep. 507.

ESTOPPEL.—*Bill of Sale Act, 17 & 18 V. c. 36—Owner of goods standing by and allowing another to deal with them as his own.*—It is a well-established rule of law, that estoppels must be mutual, and that they bind parties and privies only. It appeared, that one Martin purchased

goods of Johnson, who sent them to where Martin ordered. Hord (in Martin's presence) represented to one Richards, of whom Hord wished to borrow money on the goods, that the goods were his; Richards then lent Hord money upon the goods, and took from Hord a bill of sale; subsequently the goods were taken by the sheriff under an execution at the suit of Johnson. In an interpleader issue the jury found there had been no transfer of goods from Martin to Hord previous to the execution of the bill of sale: Held, that Martin was estopped from saying the goods were not Hord's, but that Johnson was not estopped from saying the goods were not Martin's. *Richards v. Johnson*, 33 Law Tim. Rep. 206.

ESTOPPEL.—*By conduct—Inference from silence.*—Plaintiff's foreman sold goods of his master to the defendant, representing when he sold them that he was dealing on his own account, and selling the goods as principal. The sales were entered in the plaintiff's book as made to the defendant, and invoices were sent by the plaintiff to the defendant, in which the defendant was charged with the goods to the plaintiff. The foreman explained to the defendant that it was done by mistake, as he, the foreman, and not the defendant, ought to have been charged in the invoice; and the defendant gave the foreman bills for the value of the goods, and afterwards settled amount in account with him: Held, that the plaintiff was entitled to recover the price of the goods, and in an action for goods sold and delivered, on the ground that the defendant had, as found by the jury, so conducted himself as naturally to induce a belief in the plaintiff's mind that the defendant was purchasing the goods of him. *Cornish v. Abington*, 7 Week. Rep. 504.

LANDLORD AND TENANT.—*Evidence of eviction—Direction of judge.*—In an action for rent defendant contended that he had been evicted from the premises. Plaintiff was the owner of a house, and let the first floor to defendant. Defendant being desirous to underlet, put a man in possession to show the rooms, and put up a bill, stating that the rooms were to let, in the window. Plaintiff decoyed the man out of the rooms, and turned him out of the house, and the shutter of the room were then closed, and the bill taken down; the keys were left in the rooms. The learned judge who tried the cause left it to the jury to say, whether the turning out of the man was simply to expel him as being personally offensive to the plaintiff, or whether it was done with the intention of evicting the defendant: Held, a right direction. *Henderson v. Mears*, 33 Law Tim. Rep. 202.

PATENT.—*Application of known process to new but similar material.*—Where a patent has been obtained for strengthening and polishing linen and cotton yarns by means of friction brushes, another patent cannot be taken out for applying the same process to yarns of wool or hair, or to fabrics made of cotton, linen, silk, wool, or hair. *Brook v. Aston*, 28 Law Journ. Rep. Q. B. 175.

PUBLIC COMPANY.—*Liability of executor of deceased shareholder.*—Where the act of Parliament which constituted a public company provided that the shareholders should continue liable for the debts of the company

as they would have been if the company had not been incorporated, and that, if execution could not be obtained against the property and effects of the company, then execution might be issued against the person, property, and effects of any shareholder, or any former shareholder who was such at the time of the obligation being incurred or being still in existence: Held, that this did not admit of execution being issued against the executor of a shareholder who died before the judgment had been recovered against the company, but who was a shareholder when the obligation was created, and continues to be so up to the time of his death. *Poole v. Knott*, 7 Week. Rep. 527.

RIGHT OF SUPPORT.—*House adjacent—Right to support of—Liability of owner for negligence of sub-contractor.*—The following is an important decision, proceeding, according to the opinion of C. B. Pollock, but not assented to expressly by the other judges, that the right of one man's land to support from the adjoining land is not an easement, or in the nature of an easement at all, but a natural right (*Rowbothom v. Wilson*, 8 E. & B. 123), as C. B. Pollock said: "But the right to support for one building from an adjoining building is certainly not a natural right. It may arise in different ways. In *Partridge v. Scott* (7 M. & W. 220), Alderson, B., in delivering the judgment of the court with regard to a right, very analogous says that rights of this sort, if they can be established at all, must have their origin in grant. In *Peyton v. the Mayor of London* (9 B. & C. 736), Lord Tenterden intimated, that if it appeared that both houses were originally built by the same owner, the right to support might exist. In *Richards v. Rose* (9 Ex. 218), the Court of Exchequer held that in the latter case such a right did exist. Such a right or easement was recognised by the civil law. If the house removed had been the next adjoining the plaintiffs, we should have felt much embarrassed by some cases and dicta. In *Stansell v. Godrell* (1 Selwyn's N. P. 457), and *Hide v. Thornborough*, such a right of support is stated to be gained, if the houses have stood for twenty years; and in *Humphries v. Brogden* (12 Q. B. 149), Lord Campbell refers to these cases. It is extremely difficult to see how the circumstance of the houses having stood for twenty years makes any difference or creates a right. Where houses are supposed to have been built by different adjoining landowners, each with its own separate and independent walls, but that upwards of twenty years ago one of them got out of the perpendicular, and leaned upon and was supported in part by the other, so that if the latter were removed, the other would fall, the question is whether any right of support is thereby obtained. It cannot be a right of prescription, which supposes a state of things existing before the time of legal memory, nor does it seem to us to be a right under the Prescription Act (2 & 3 W. 4, c. 71), which has been hitherto confined to rights in their nature of a perpetual and permanent character, and the ownership of which in fee simple. It seems to us, that, in the absence of all evidence as to origin or grant, the only way in which such a right can be supported is that suggested by Lord Campbell in *Humphries v. Brogden*, namely, an

absolute rule of law similar to that which is stated to have existed in the civil law. But there is no authority for any such rule to be found. The facts were as follows: The plaintiff owned a house; adjoining it was a house of a third person; and adjoining this third person's house were two houses of the defendants. The four houses for more than thirty years past were all of them out of the perpendicular, leaning to the west. The defendants contracted to have their houses, which were the most westward, pulled down and others erected in their places. The contractor pulled them down, and by so doing, the plaintiff's houses fell and did damage: Held, that the plaintiff had not established his claim to a right of support for his house, and enjoyed as of right from the defendants through the medium of the plaintiff's houses being supported by the intermediate house, which leaned upon the defendants. *Solomon v. The Vintner's Company*, 33 Law Tim. Rep. 224.

STATUTE OF LIMITATIONS.—9 Geo. 4, c. 14, s. 1—*Acknowledgement in writing.*—A party chargeable with a debt wrote a letter, wherein he stated an account, making the debt one of the items against himself, and claiming a balance in his own favour and offered to make an arrangement, which was not acceded to: Held, that the letter was not an acknowledgement within Lord Tenterden's Act. *Francis v. Hawksley*, 7 Week. Rep. 509.

USE AND OCCUPATION.—*Demise by mortgagee*—*Notice to pay rent by mortgagee.*—A mere notice by a mortgagee to a tenant of the mortgagor's to pay his rent to him the mortgagee, is not, per se, any answer to an action on the contract between the landlord (the mortgagor) and the tenant. A., being mortgagor in possession, agreed to grant a lease for twenty-five years to B., who was to enter and hold the premises subject to the terms of the agreement until the lease was granted; B. entered and paid six quarters' rents; A. then assigned all his estate and interest to the plaintiff as a defence in an action for use and occupation; B. relied on a notice from the mortgagees to pay rent to them: Held, that such a mere notice was no answer to the action. *Hickman v. Machin*, 33 Law Mim. Rep. 206.

COMMON LAW PRACTICE.

ATTACHMENT OF DEBTS.—*C. L. P. Act, 1854, s. 61*—*Recovery against three, debts owing to two.*—If a judgment be recovered against three, the debts owing and accruing to two of the judgment debtors out of the three may be attached to answer the judgment debt, the proceedings under sec. 61 of 17 & 18 V. c. 125, being analogous to execution by fieri facias. *Miller v. Mann*, 7 Week. Rep. 524.

ATTORNEY.—*Ceasing to practice*—*Examination, when necessary for re-admission.*—An attorney having practised for twenty-seven years, eighteen years ago ceased to practice and take out his certificate: Held, upon an application to renew his certificate, that he must be re-examined. *Esparle Leith*, 7 Week. Rep. 579.

ATTORNEY AND CLIENT.—*Attorney's lien for costs—Right of the parties to compromise action, and thereby defeat the attorney's right to costs.*—If the parties to an action enter into a compromise, the effect of which is to deprive the plaintiff's attorney of his lien for costs, the Court of Queen's Bench will not set it aside unless it be collusively entered into with the express object of defeating the attorney's lien. *Semble*, that if a case for the interference of the court be made out, the proper way of proceeding is to apply to the court to compel the defendant to pay the attorney his costs. *Brunsdon v. Allard*, 7 Week. Rep. 581.

BILL OF SALE.—*Filing bill of sale under 17 & 18 V. c. 36, "together with" an affidavit, &c.—Evidence of filing of one amounting to evidence of filing the other—Public document—Certified copy—14 & 15 V. c. 99, s. 14.*—A certified copy (under s. 14 of the 14 & 15 V. c. 99) of the entry, under s. 3 of the 17 & 18 V. c. 36, in the book kept by the officer of the Court of Queen's Bench, of a bill of sale, and the date of the execution and filing of it, is evidence not only of the filing of the bill of sale and of the date of the execution and filing of it, but also of the filing and time of filing the affidavit (together with which affidavit the bill of sale is, by sec. 1 of the 17 & 18 V. c. 36, to be filed). *Grindel v. Brindell*, 7 Week. Rep. 579.

COSTS.—*Verdict for a farthing damages upon one issue.*—Where before a trial the parties agree to refer the cause to an arbitrator, and that the costs of the cause shall follow the event, a finding for the plaintiff upon one issue out of several, with a farthing damages, will carry the costs of the cause. *Wiggins v. Cook*, 33 Law Tim. Rep. 224.

JUDGMENT FOR NOT PROCEEDING TO TRIAL.—*Reg. Gen. Hil. T., 1853, s. 176—Month's notice of proceeding.*—Where no proceedings have been taken in a cause for a year, the defendant must, before signing judgment, give a month's notice of intention to proceed, under rule 176 of the Rules of Hil. T. 1853, although he had given twenty days' notice to the plaintiff to proceed to trial. *Metcalf v. Hetherington*, 28 Law Journ. Rep. Ex. 155.

PUBLIC COMPANY.—*Rectification of register of shareholders.*—Where an application is made to the court to rectify a register of transfers under 19 & 20 Vic. c. 47, s. 25, and 20 & 21 Vic. c. 14, s. 9, and a rule nisi is granted the parties in whose names the shares stand on the register, as well as the company, should be made parties to the rule. *Swan v. North British Australasian Company*, 33 Law Tim. Rep. 244.

QUARE IMPEDIT.—*C. L. P. Act, 1852, ss. 80, 81.*—Sections 80 and 81 of the C. L. P. Act, 1852, apply to pleadings in quare impedit, so as to entitle the plaintiff to reply several matters and demur. *Marshall v. Bishop of Exeter*, 7 Week. Rep. 525.

PROBATE AND DIVORCE.

MARRIAGE.—*Wife's sister—Marriage of deceased wife's sister by a naturalised British subject domiciled in England—Marriage void—Will made*

previous to such marriage not revoked by 1 V. c. 26, s. 18—Domicil—Lex loci contractus.—B. M., a native of Hesse Cassel, being domiciled in England, married in England, and had issue. After his marriage he became naturalised by act of Parliament, and subsequently executed a will, as required by 1 V. c. 26. His wife died, and he then married E. F., her sister by the half-blood, a native of Frankfort, at that town, according to the rites of the German Protestant Church there established, contracting a marriage valid by the *lex loci*. B. M. continued domiciled in England until his death, when he left issue by his second marriage: Held, that B. M., as a natural born subject, and domiciled in England, was bound by the statute 5 & 6 W. 4, c. 5, that, though by the law of Frankfort, the place of E. F.'s domicil, a marriage with the deceased wife's sister was valid, yet the disability of either of the parties to the contract would invalidate the marriage; that B. M.'s marriage with his deceased wife's sister was therefore void, and that his will, executed before his so-called second marriage was not thereby revoked under 7 W. 4 and 1 V. c. 26, s. 18. *Re Bernhard Mette*, 7 Week. Rep. 548.

PROBATE.—*Effect of grant—Contents of will affected by domicil—Invalidity in place of domicil allowed.*—Where probate of a will is granted, it is conclusive evidence of a will having been made; but this does not affect the validity of the contents of such will. Where, therefore, the will of a testator domiciled abroad had been proved in this country, and the dispositions contained in the will were invalid according to the laws of that country, a plea to that effect was allowed. *Campbell v. Beaufoy*, 33 Law Tim. Rep. 199.

PROTECTION ORDER.—*Reversal of—Supplemental order in Chancery—Divorce and Matrimonial Causes Act.*—A married woman obtained a protection order under the Divorce and Matrimonial Causes Act, and whilst the order was in force, was made defendant in a suit as a feme sole. Afterwards her husband obtained a reversal of the protection order, on the ground that it was made on a false allegation. The plaintiff then made the husband a party by supplemental order: Held, reversing the decision of Kindersley, V. C., that the supplemental order was regular; but whether the order would have been regular if the wife had been interested, not in her own right, but as executrix, *quære*. *Rudge v. Weedon*, 7 Week. Rep. 519.

BANKRUPTCY.

ARRANGEMENTS.—*By deed—Debtor and creditor—Insolvent trader—Bankrupt Law Consolidation Act, 1849.*—This is another case of the failure of a deed of arrangement under the Bankruptcy Consolidation Act. To a declaration containing the common money counts, the defendants pleaded that they were traders, and that they had entered into a composition deed, which was signed by and on behalf of six-sevenths in number and value of their creditors, within the meaning of the Bankrupt Law Consolidation Act,

1849; that the plaintiff was a creditor and did not sign the deed. The deed was set out in the plea, and by it the defendants assigned all their joint and separate real and personal estate to trustees, upon trust, after paying expenses, &c., to pay and divide all the remainder of the said trust moneys unto and among themselves and all the other creditors, and upon further trust to pay the ultimate surplus, if any, and also the dividends of such of the creditors as should not execute the deed, to the defendants. The plaintiff replied, that there were separate creditors of the defendants to the amount of more than £10. The defendants traversed and demurred to the replication: Held, that the deed set out in the plea was invalid on the grounds, first, that it directed the distribution of the joint and separate estate of the defendants among the joint creditors only, and secondly, because the estate ought to be divided amongst those who did not sign, as well as amongst those who did sign the deed. *Leonard v. Sheard*, 28 Law Journ. Rep. Q. B. 183.

COUNTY COURTS.

APPEAL.—*Deposit of money and giving memorandum to registrar.*—Semble, it is sufficient upon a county court appeal, where security is required to be given according to the 13 & 14 V. c. 61, s. 14, that a deposit of money be made under the 19 & 20 V. c. 108, s. 71, without the memorandum setting forth the conditions on which such money is deposited, as required by the latter act; but it is the duty of the officer of the court to see that such memorandum is given, and if it be not given, the opponent should move to strike out the appeal when first set down for argument. *Coleman v. Griffin*, 32 Law Tim. Rep. 333.

CONCURRENT JURISDICTION.—9 & 10 V. c. 95, s. 128—15 & 16 V. c. 54, s. 4.—*Two residences of a plaintiff—Alternate occupation—Costs.*—The defendant resided and carried on business permanently in London. The plaintiff had two residences, each of which was occupied by the plaintiff and his family during certain portions of the year, the one at his country seat in Warwickshire, the other at his town house in Grosvenor place. The former was more than twenty miles, the latter less than twenty miles, from the defendant's residence. The cause of action, which was for less than £20, arose in London, and at the time of action brought in the Court of Common Pleas, the plaintiff and his family were residing at the plaintiff's country seat in Warwickshire: Held, that the superior court had concurrent jurisdiction with the county court to entertain the plaintiff's claim within the meaning of the 128th section of the 9 & 10 V. c. 95; and the court discharged a rule calling on the plaintiff to show cause why the proceedings should not be stayed on payment of the debt, without costs, holding that the plaintiff was entitled to his costs under the 4th section of the 15 & 16 V. c. 54. *Butler v. Ablewhite*, 7 Week. Rep. 583.

COSTS.—*Suggestion to deprive plaintiff of costs—City Small Debts Acts Extension, 1852—Judge intending to certify for costs.*—The court will not

grant a rule to deprive a plaintiff of costs, where the judge who tried the cause, but has not certified, intimates his intention to certify. *Rowland v. Lazarus*, 33 Law Tim. Rep. 136.

COSTS.—*Concurrent jurisdiction*—*Agent of defendant residing within jurisdiction*—*Corporation*.—A corporation does not dwell, within the meaning of the 128th section of the 9 & 10 V. c. 95, at a place other than their chief office, where they carry on business by means of an agent only. The General Steam Navigation Co. had an agent P. at N., who conducted the business there; he had an office entirely set apart for their use, for which they paid rent: Held, that the company did not dwell at N. within the meaning of the 9 & 10 V. c. 95, s. 128, so as to deprive the superior courts of their concurrent jurisdiction; that P. was not their clerk within the meaning of the 51st rule made under the provisions of the county court acts. *Corbett v. The General Steam Navigation Company*, 33 Law Tim. Rep. 137.

CRIMINAL LAW.

COUNTY RATE.—*Basis or standard of—Assessment of parish*—15 & 16 V. c. 81, s. 2.—By s. 2 of 15 & 16 V. c. 81, the basis or standard for the county rate is to be founded and prepared according to the full and fair annual value of the property rateable to the relief of the poor in every parish within the county: Held, that unoccupied houses, capable of being rated, were to be included in the valuation. *Reg. v. Hammersmith*, 7 Week. Rep. 524.

NUISANCES.—*Nuisances Removal Act, s. 6*—*Extra-parochial Place*—*Sea shore*.—The sea shore below high water mark, and without inhabitant, is an extra-parochial place, having a population of less than 200 persons, within the meaning of s. 6 of 18 & 19 V. c. 121. *Reg. v. Gee*, 7 Week. Rep. 528.

PAUPER.—*Irremovability*—9 & 10 V. c. 66, s. 1—11 & 12 V. c. 111, s. 1.—By sec. 1 of the 9 & 10 V. c. 66, no person is to be removed from any parish in which such person shall have resided for five years next before the application for the warrant, "provided that the time during which such person . . . shall receive relief from any parish . . . shall, for all purposes, be excluded in the computation of time hereinbefore mentioned," &c. By sec. 1 of the 11 & 12 V. c. 111, "whenever any poor man shall have a wife or children, having no other settlement than his or her own, such wife and children shall be removable from any parish or place from which he or she would be removable, . . . and shall not be removable from any parish or place from which he or she would not be removable by reason," &c. In the following case it appeared that the father of the pauper, whose place of settlement was A., had acquired in the year 1844 the status of irremovability in B. In that year the pauper was born, and resided with B. until his death, in December, 1857. In 1847, the pauper's mother, and wife of her father, became chargeable to the respondent township, and subsequently her settlement was adjudged to be in the appellant township

of A., and an order of maintenance was made upon it. She remained chargeable to A. until her death, in October, 1858. The pauper continued after her father's death to reside in the respondent's township of B.; and in February, 1858, she having become chargeable, an order of removal was obtained for her removal to the appellant township: Held, that she had acquired the status of irremovability from the respondent township. *Reg. v. The Churchwardens and Overseers of Elvet*, 33 Law Tim. Rep. 202.

Notices of New Books.

CRABB'S PRECEDENTS IN CONVEYANCING.

Crabb's Complete Series of Precedents in Conveyancing and of Common and Commercial Forms, in Alphabetical order, adapted to the present state of the Law and the practice of Conveyancing; with copious Prefaces, Observations and Notes on the several Deeds. Edited by J. T. CHRISTIE, Esq., Barrister-at-Law. Fifth Edition, with numerous Corrections and Additions, by LEONARD SHELFORD, Esq., Barrister-at-Law. London: Butterworths, 7, Fleet-street.

CONVEYANCING is the most profitable part of a solicitor's business, and we trust will, in spite of the efforts of would-be-reformers, continue to be so for many years. There is no doubt, however, that great exertions will be made to reduce the emoluments derivable from this part of business; and, as the cry is a popular one, it may meet with more support than the profession will like. The evil day may, however, be staved off for some years to come. No doubt some of the objections made to conveyancing arise from the great length of drafts, and also of abstracts of title. The present practitioners, therefore, should direct their attention to the curtailment, as far as compatible with safety, of their drafts. Many works containing precedents of conveyancing have within the last few years been issued, which present a real improvement in this respect; and, as these works have received the support of the profession, it is pretty clear that the old calumny, that lawyers increase the length of their drafts merely for the sake of the additional charges, is wholly unfounded. Among other Precedents are those of the late Mr. Crabb, of which the fifth edition is now before us. Most of our readers are familiar with the professional career of Mr. Crabb, a short memoir of him having some years ago appeared in our publication. With the former editions of the work we are not now dealing, confining ourselves to the new edition just issued. We may state, that we consider

it is a work calculated to be useful to the practitioner. It possesses one distinctive feature in devoting more attention than usual in such works to forms of a commercial nature. It is impossible in the case of a work of this nature to present the reader with any critical notice; but we are satisfied, from an examination of the present with the immediately preceding edition, that Mr. Shelford has very considerably improved the character of the work, both in the prefaces and in the forms. The two volumes contain several hundred pages of additional matter, and both the latest cases and decisions appear to be noticed in the preface. Indeed, it is evident that Mr. Shelford has modernised the whole work, and thus given it an additional value. We find it difficult to select any extracts from the work compatible with our limited space, but the following one must suffice:—

"Definition—Apportionment of rents and application of apportionment.—Sec.

1. Apportionment, or setting apart or dividing into set portions for particular purposes, is applicable to several matters in law,—as to rents, contracts, conditions, covenants, commons, annuities, dividends, mortgages and other payments, at stated periods. Some of these things are apportionable by act of law, if not by the act of the party; some, as interest on mortgages and sums payable on policies of insurance, are not apportionable at all; others, as annuities, &c., are apportionable, not at common law, but by statute, see further, *infra*.

"2. Apportionment of rent is in two ways: first, in respect to the parties entitled to receive or bound to pay the rent. Secondly, as to the particular portion of time for which rent is payable after the death of a party or otherwise.

"By the old rule of law, where a tenant for life granted a lease for years payable half-yearly, and died in the interval before any half-yearly payment became due, his executors and administrators were not entitled to the rent coming due, but it fell into the land. By the 11 G. 2, c. 19, s. 15, it is provided, that where any tenant for life dies before or on the day on which any rent is reserved upon any demise which determines at the death of such tenant, his executors or administrators may recover the whole, or, if before the day, a proportion of such rent, according to the time the tenant lived of the last year, half-year, quarter or other time in which the rent was growing due. Under this statute it was held that the representatives of a tenant in tail were entitled to apportionment; but whether a tenant *pur autre vie* was within the statute appears not to have been settled. But now by the 4 & 5 W. 4, c. 22, amending and extending the former act, rents reserved on leases determining on the death of the person making them, although not strictly tenant for life, or on the death of tenant *pur autre vie*, are to be apportionable according to the provisions of that act (see Shelford's Real Prop. Stat. pp. 509—522, 6th ed.; Tudor's L. C. on Real Prop. pp. 181—187).

"By sec. 2 of the 4 & 5 W. 4, c. 22, all rents service reserved on any lease by a tenant in fee or for any life interest, and all rents, annuities and other payments, coming due at fixed periods under any instrument executed after the passing of the act, should be apportioned so that on the death of any person interested in such rents, or the determination of the interest of such person, he or she, or his or her executors, administrators or assigns, shall be entitled to a proportion of such rents. Notwithstanding the express words of this statute, it has been held that the statute only applies to cases in which the interest of the person interested in such rents or payments is terminated by his death, or by the death of another person; but does not apply to the case of a tenant in fee, or provide for the apportionment of rent between the real and personal representative of such person whose interest is not terminated at his death (*Browne v. Amyot*, 3 Hare, 173; 8 Jur. 568; see *In re Clulow*, 3 Kay & J. 689; 26 L. J. Chan. 513). The act does not apply to rents payable from year to year, not reserved by an instrument in writing (*In re Markly*, 4 M. & C. 484). This act has been held to apply to Scotland, and includes a Scotch tenant in tail (*Fordyce v. Br.*, 1 H. L. C. 1; *Baillie v. Lo.*, 2 Macq. H. L. C. 258).

"*Apportionment of contracts*.—3. As a rule, where a contract is entire, it cannot be split (3 Vin. Abridg. tit. Apportionment); therefore, where a party agrees to deliver a certain quantity of goods within a certain time, he cannot bring an action for the amount of any part, but must wait until the whole is delivered (*Waddington v. Ol.*, 2 N. R. 61), unless the buyer consents to keep the part, when the value thereof may be ascertained (*Shipton v. Ca.*, 5 B. & C. 378, recognised in *Oxendale v. We.*, 9 B. & C. 386). So where a party engages to do a specific work for a specific sum, he must complete the work before he can recover the sum agreed on (*Sinclair v. Bo.*, 9 B. & C. 92); but where a shipwright enters into a general engagement to repair a ship, he may, on having done a part, refuse to proceed until he is paid for the part completed (*Roberts v. Ha.*, 3 B. & Ad. 404), distinguishing this from the preceding case; so formerly, where a party agreed with a builder to build a house according to a given plan, and deviations were afterwards made, such deviations formerly invalidated the whole contract, and enabled the builder to make his own charges, without regard to any contract; but now he can in such case recover only a quantum meruit in respect of the deviations; so formerly shipowners were liable to the full extent of any loss or damage; but by stat. 17 & 18 V. c. 104, ss. 503—506, the liability is limited to the value of the ship and the amount of the freight; and where there are several sufferers, the compensation to them is proportioned to their several losses.

"*Apportionment of conditions and covenants*.—4. Conditions, being entire, are for the most part not apportionable except where they are so by act of law; so also as to covenants for title or covenants in leases.

"*Apportionment of commons*.—5. If a man purchase part of the land,

wherein common appendant is to be had, the common shall be apportioned, because it is of common right (Hob. 235; Tyrringham's case, 4 Co. 37); sed secus as to common appurtenant or any other common whatsoever (1 Inst. 122a).

"*Apportionment of annuities, &c.*—6. By sec. 2 of the before-mentioned act, 4 & 5 W. 4, c. 22, its provisions are extended to all rents, annuities, and other sums coming due at fixed periods, which are to be apportioned in like manner. This was doubtless intended to apply to every case where an annual sum determines on the death of the person interested, whether grantor or grantee; but as it is not stated in express terms, it may be prudent to insert the usual stipulation in an annuity deed.

"*Other periodical sums—Maintenance, &c., apportionable—Interest on a mortgage.*—Although before this act there were several periodical payments which were not apportionable, as dividends on money in the funds (Rashleigh v. Ma., 3 Br. C. C. 101), yet the case of maintenance for infants was excepted, and it was held in that case that a party was entitled to a proportional part of his annuity for the time between the last half-yearly day of payment and his attaining twenty-one (Weigall v. Br., 6 Sim. 99); so interest on mortgages was held to be apportionable; but that was rather because interest on a mortgage is in fact due from day to day, and therefore not properly a periodical payment (Edwards v. Warwick (Countess), 2 P. Wms. 276; see 1 Swanst. R. 337—350, n.). As to dividends of a commercial company, see Hartley v. Al., 4 Jur. N. S. 500; 27 L. J. Chan. 621.

"*Policies of assurance.*—By sec. 3 of the 4 & 5 W. 4, c. 22, annual sums made payable on policies of assurance are not to be apportioned.

"*Apportionment of rent-charges in lieu of tithes.*—7. The owner of lands charged with a rent-charge in lieu of tithes may obtain an alteration of the apportionment by any three of the commissioners of land-tax for the county or place where the lands are situate, with the consent of two justices of the peace acting in such place, so that no subdivision of any rent-charge shall be less than 5s. (6 & 7 W. 4, c. 71, s. 72; 5 & 6 V. c. 54, s. 14)."

On the whole, the two volumes of Crabb's Precedents, as edited by Mr. Leonard Shelford, will be found extremely useful in a solicitor's office, presenting a large amount of real property learning, with very numerous precedents. Indeed, we know of no book so justly entitled to the appellation of "handy" (now so hackneyed since the little work of Lord St. Leonards) as the fifth edition of Mr. Crabb's Precedents, which, however, in volume presents a remarkable contrast with the "Handy Book of Real Property Law."

Moot Points.

No. 97.—*Clergyman creating Equitable Charge.*

Can a clergyman create an equitable charge on his living under the statute 1 & 2 V. c. 110? J. W. S. LAVENDER.

No. 98.—*Voluntary Settlement—Extent of—To Collateral Relations.*

A settlement made on a wife or children prior to marriage is a conveyance for valuable consideration, and the marriage consideration runs through the whole settlement so far as it relates to *husband, wife, and issue*, but whether it extends to *collateral relations*, so as to support them against a subsequent sale to a bona fide purchaser, is a point that has been often raised but appears not to have been settled. The opinions of correspondents would oblige, a case similar to the above having come under the mooter's notice. Attention is requested to *Goring v. Nash* (3 Atk. 186), *Davenport v. Bishopp* (2 Y. & C., C. C. 453, & 1 Phill. 701). See also *Sugden's V. & P.* 931 & 933, and *Smith's Principles of Equity*, p. 337.

J. W. S. LAVENDER.

No. 99.—*Promise of Marriage.*

I should be glad to have the opinion of your correspondents as to whether a woman can, under any, and what, circumstances, compel the fulfilment of a promise to marry her. EQUITAS.

No. 100.—*Defamation.*

A. B., the secretary to a power loom society in a provincial town, was discharged; after his discharge, he sent the following memorandum to the board of management:—

"I, A. B., charge C. D. with defrauding No. 20 District to a large amount.

Yours, &c.,
(Signed) A. B."

C. D. was formerly a collector in one of the districts of the society, and is now a member of the board, but is suspended until he has satisfied the board that the accusation is groundless.

Can C. D. maintain an action against A. B. for defamation of character? if not, what other course of procedure is open to him? EQUITAS.

No. 101.—*Investment of Deposit on Sale.*

A condition of sale is:—That a deposit of £10 per £100 shall be paid to the vendor's solicitor. The solicitor receives it, and invests it in his own name, and, by a rise in the funds, a great profit is made; the investment is made without the knowledge of the vendor or purchaser. To whom does the profit belong? EQUITAS.

No. 102.—*Copyhold—Merger.*

A. was admitted tenant to a copyhold estate, and some years afterwards

became possessed in fee simple of the manor of which it formed a part. He devised the manor and other freehold estates to B. in fee, and the rest of his freehold and his leasehold and copyhold estates to trustees for sale. Did the copyhold estate merge and become extinguished in the freehold of the manor, so as to pass by the devise to B., or does it preserve its copyhold nature, and go to the trustees?

F. I. W.

No. 103.—*Verdict of "Not Proven."*

What is the effect of a verdict "of not proven" in the Scotch courts? Can a prisoner be tried again for the same offence after such a verdict or not?

F. I. W.

No. 104.—*Landlord and Tenant—Reparation.*

Is a landlord, who covenants to keep the exterior of a house in repair, the tenant repairing the interior, liable to mend windows broken by a hail-storm, or is the liability on the tenant?

F. I. W.

No. 105.—*Liability of Insurance Company.*

A captain insures his life in an accidental death insurance association. The policy insures against all accidents, perils in battle and by the Queen's enemies excepted. His vessel is stranded on the coast of China, and surrounded by pirates, who, at first, appear friendly, and come on board, but afterwards set upon, stab, and wound him very severely. Can he recover under the policy? There was no war between China and this country at the time. References to cases will oblige

J. F. H.

No. 106.—*Executor.*

Can an executor of an executor accept the office of executor to his own testator, and renounce being executor to the first testator? In the goods of Kerry (2 Curtis, 655; Hayton v. Wolfe, Cro. Jac. 614; Wangford v. Wangford, 1 Salk. 299; Shatter v. Friend and Wife, 3 Mod. 283; Mallary v. Marriot, Cro. Eliz. 666; Hob. 188; Williams on Executors and Administrators, 226; Smith's Law of Real and Personal Property, 844; 3 Steph. Com. 1st ed. p. 685).

C. F. W.

No. 107.—*Infant Baron.*

Is an infant husband liable, during the joint lives of himself and wife, for her debts contracted before marriage (Turner v. Trisby, 1 Stra. 168; Paris v. Stroud, 1 Barnes 95).

C. F. W.

No. 108.—*Landlord and Tenant.*

Is the landlord, who forcibly enters on premises, the tenant of which holds over after the tenancy has been duly determined, liable in a civil action at the suit of the tenant (Taylor v. Cole, 3 T. R. 295; Harvey v. Brydges, 14 L. J. Rep. Ex. 272; Taunton v. Costa, 7 T. R. 131; Turner v. Meymott, 1 Bing. 158).

C. F. W.

No. 108.—*Private Road—Evasion of Toll thereby—Liability of Owner to keep Gates Closed or Locked.*

A. is the owner of land in the village of B., one of whose fields is at the

immediate back of the turnpike house, and is used by A. as a carriage road, which, of course, he can legally do: But, as other persons frequently make use of such private road for the purpose of evading the toll, A. has been requested, at the instance of the road surveyors or commissioners, not only to keep the gates of the field closed, but also locked. Now, as A. constantly uses this road, it will, of course, be highly inconvenient for him to keep such gates closed and locked.

The act 3 G. 4, c. 126, s. 41, enacts, that if any person shall, with any horse, &c., go off, or pass from, any turnpike road, through or over any land or ground near or adjoining thereto (not being a public highway, and such person not being the owner or occupier, &c.), with intent to evade the payment of any tolls granted by any act of Parliament, &c., *such person shall, for every such offence, forfeit and pay any sum not exceeding £5.*

The mooter contends that, as the remedy is pointed out by the above statute, A. cannot be compelled either to keep his gates locked or even closed.

Will correspondents refer to cases (or give their opinions) herein, and oblige

ONE WHO WANTS TO KNOW.

No. 109.—*Dower.*

Previously to the year 1834 A. purchases freehold property, and has it conveyed to the ordinary uses to bar dower, and in which is this clause:—To the intent that no future wife of the grantee shall be entitled to dower out of the estate. Subsequently to 1834 he marries. Is his widow entitled to dower? (*Fry v. Noble*, 20 Beav. 598; 25 L. T. Rep. 362).

C. F. W.

No. 110.—*Devise to a Class.*

A testator by his will, dated 2nd November, 1838, devised a dwelling house and land to his son Thomas, charged with the payment of £100 to his (the sons) brothers and sisters equally. One sister died in the testator's lifetime, leaving a husband and several children surviving. There are two brothers and a sister besides. To whom is the £100 payable? (see *Olney v. Bates*, 3 Drew, 319; *Leigh v. Leigh*, 18 Jur. 115; 23 L. J. Ch. 287; *Viner v. Francis*, White T. L. Ca. and notes; *Leake v. Robinson*, 2 Mer. 363; *Bisset's Diss. to Jar. Con. Wills*, 207; *Doe d. Steward v. Sheffield*, 13 East 526.

C. F. W.

Answers to Moot Points.

No. 84.—*Tenant for Life of Leaseholds and Remainderman—Forfeiture by Acts of Tenant for Life (ante, p. 198).*

If the landlord choose to take advantage of the breaches of covenant, I see no remedy for the remainderman but an action for damages against the tenant for life.

If the remainderman could induce the landlord to accept the rent, I think

he would be safe in paying it, as, so far as I can judge from the short statement of the will, the intent of it appears to be that the payment of rent, &c., by the tenant for life is a condition precedent to his enjoying the property for life, and that, the condition not being performed, his interest is gone, and B.'s accelerated into possession.

Acceptance of rent by the landlord would not only cure the breach of covenant to pay rent, but also all breaches of covenant occurring prior to the rent becoming due, of which the landlord had notice, at least, as a general rule.

S. J. E.

No. 85.—*Settlement of Leaseholds Occupied by Husband* (ante, p. 198).

I should, prior to the trust for the wife for life, simply insert a trust, "as to the leaseholds, to permit and suffer the husband to use and occupy the same as his residence so long as he should think fit, or until his bankruptcy, &c.," and subject thereto declare the trusts of all the settled property.

As the leaseholds will, of course, be worse than unproductive whilst the husband occupies them, I think it would be well specially to empower the trustees to resort to the other settled property, in order to the payment and performance of the rent and covenants in respect of the leaseholds, although I think they would be entitled, and, indeed, bound to do so without such a power.

S. J. E.

No. 86.—*Implying Cross-Remainders* (ante, p. 198).

The share of the deceased child in the accruing shares of his uncles, who died without issue, descends, I think, to the heir-at-law of the testator as undisposed of. Cross-remainders are not created, as to accruing shares, by an express creation of cross-remainders as to original shares (*Edwards v. Alliston*, 4 Russ. 78; see also *Eastland v. Reynolds*, Dick. 317).

No. 87.—*Barring Entail* (ante, p. 198).

I am of opinion that the recovery barred the entail; but, at the same time, think that the transaction might be impeached on the ground that B., being a trustee, was not justified in purchasing the estate of himself (exp. *James*, 8 Ves. jun. 631). T. D. G. seems to be under a slight mistake, since the recovery was not suffered by B., the tenant for life, as he seems to suppose, but by C., the first tenant in tail. 14 Eliz. c. 8, is therefore inapplicable.

A. K. R.

No. 88.—*Negligence of Assignee of Bankrupt* (ante, p. 199).

I think the negligence of the assignees affords no ground of action against them to a creditor who has not proved his debt, but I am not aware of any authority on the point.

A. K. R.

No. 89.—*Trustees Insuring Trust Premises without Authority* (ante, p. 199).

I agree with Mr. W. S. Lavender in his opinion that trustees are justified in insuring the trust property, and charging the expenses against the estate, though not expressly authorised so to do by the instrument creating the trust; but, since I cannot meet with an authority, I think it would be

advisable to take the opinion of the court upon the point, by doing which they can run no risk.

A. K. R.

No. 89.—*Trustees Insuring Trust Premises without Authority—Expenses, &c.* (ante, p. 199).

I cannot put my hand on any authority upon this point, and I think it would be difficult to find one, on account of the law being so well settled in the affirmative (see 2 Spence, 988). Indeed, am of opinion that the trustee would, in the absence of any direction, yet be bound to insure, from the general doctrine of equity, that a trustee should exercise that care and circumspection a prudent man usually would in the management of his own affairs (see Smith's Manual of Equity, 163, 5th ed.).

S. J. E.

No. 90.—*Promise of Marriage* (ante, p. 199).

A bill in equity will lie to discover a promise to marry, although not to enforce specific performance thereof, the only remedy being an action for damages.

SIGMA.

No. 93.—*Attorney to Corporation—Appointed by Parol—Costs* (ante, p. 200).

A corporation aggregate must, in general, contract by deed, and cannot bind itself by parol.

This is a rule extending to a wide and important class of cases, the principle on which it rests being, that a corporate body has no mode of indicating its consent to an act done, save by the affixing of its common seal to some document, which will thus be evidence as well of the act done, as of the assent to it of the body corporate.

Upon this point, Blackstone tells us (1 Com. p. 475), that after a corporation has been formed and named, it acquires certain "capacities and incapacities, some of which are necessarily and inseparably incident to it." Amongst these is *the having a common seal*. "For a corporation, being an invisible body, cannot manifest its intention by any personal act or oral discourse; it therefore acts and speaks *only* by its common seal. For though the particular members may express their private consents to any act by words, or signing their names, yet this does not bind the corporation—it is the fixing of the seal, and that only, which unites the several assents of the individuals who compose the community, and makes one joint assent of the whole." In no other way can the concurrence of the entire body corporate in the particular act be authenticated. It could not, for instance, be evidenced by the resolution of a meeting composed of members of the corporation, however numerous attended (Judgment: Mayor of Ludlow v. Charlton, 6 M. & W. 823).

As illustrating the rule above stated, the following case may be mentioned, though, inasmuch as the maxim *exceptio probat regulam* forcibly applies in regard to the class of questions under notice, cases which are exceptions to, as well as those which support, the general rule should, in regard to its true scope and operation, be alike carefully consulted.

In *Arnold v. The Mayor of Poole*, it was held, that an attorney, who had

been employed by the Mayor and Town Council of Poole, to conduct suits on their behalf, *but had not been appointed under seal*, could not recover his bill of costs against the corporation.

My answer, therefore, to the point mooted is, in one word, "No."

JOHN W. S. LAVENDER.

No. 93.—*Attorney to Corporation appointed by Parol—Costs* (*ante*, p. 200).

"The appointment of an attorney to conduct important suits affecting the rights and property of a municipal corporation must in general be under seal, except in the case of the city of London." The above extract is taken from Addison on Contracts, vol. 1, p. 165, 3rd ed.; and I think, therefore, that W. cannot enforce the parol contract entered into by the corporation of H. (*V. Mayor of Thetford's Case*, 1 Salk. 192; 3 Salk. 108; 2 Raym. 848; Tindal, C. J., *Arnold v. Mayor of Poole*, 5 Sc. N. R. 776; 4 M. & Gr. 860).

A. K. R.

No. 94.—*Servant's Authority to Bind Master* (*ante*, p. 200).

I am inclined to think that it would not be safe for B. to supply A.'s servant with the goods under the circumstances. In *Stubbing v. Heintz*, (1 Peake 66), we find that the plaintiff was in the habit of supplying the defendant's servant with meat at a certain price, in accordance with the contract entered into by them. For some time, the payments were regularly made by the servant, but afterwards a new servant allowed the account to remain unpaid until it reached over £80, and then decamped. It was held, that the defendant was not liable for the amount. A. K. R.

No. 94.—*Servant's Authority to bind Master* (*ante*, p. 200).

"A master who sends his servant to buy goods, and gives him no money to pay, doubtless authorises him to pledge his credit; and a person who employs an agent to purchase goods on the usual terms of any particular trade gives the like authority, and so in other instances" (*Story on Agency*, 4th ed. p. 77; *Bayley v. Wilkins*, 7 C. B. 886; *Westropp v. Solomon*, 8 Id. 845; judgment, 9 M. & W. 718).

In the above and similar cases, the rule of law and common sense applies, *quando aliquid mandatur, mandatur et omne per quod pervenitur ad illud*; a rule of which the precise mode of application must, of course, depend upon the particular kind of agency which may chance to be in question, and the nature and extent of the authority conferred thereby.

JOHN W. S. LAVENDER.

No. 94.—*Servant's Authority to bind Master* (*ante*, p. 200).

I think, on reference to the "First Book," p. 103, the mooter will be convinced that his view is erroneous. It is there stated, "Where the authority of an agent is not express, and has, therefore, to be inferred from the conduct of the principal, the rule is, that the extent of the agent's authority is to be measured by the extent of his usual employment." And, p. 104, "Whatever a servant is permitted to do in the usual course of his

master's business is equivalent to a general command, and the master will be bound thereby. Thus, if a servant be sent for goods for which payment is sometimes made, and at other times not, the master is answerable to the tradesman, though the servant had the money to pay for the goods, but misappropriated it (*Summers v. Solomon*, 3 Jur. N. S. 936; & 4 L. C. 176)."

S. J. E.

No. 95.—*Insolvent—Attorney appointed Assignee—Costs, &c.* (*ante*, p. 200).

Where an attorney, being assignee of the estate and effects of an insolvent debtor, charged for business done professionally, whereby the estate had been greatly benefitted, it was held, that an assignee is only a trustee sub modo, for the purpose of the act, and, therefore, that he is entitled to remuneration for professional business done by him on behalf of the estate in his capacity of attorney, such business being performed bona fide for the benefit of the estate (*re Edmund Meadowcroft*, 27 Law Tim. Rep. 43).

JOHN W. S. LAVENDER.

No. 96.—*Deed not Stamped—Conditions of Sale* (*ante*, p. 200.)

I doubt much whether the purchaser is bound by the condition. I think it should have been fairly stated that a certain deed was not properly stamped, but the purchaser was not to be entitled to have it stamped at the vendor's expense, nor to make any objection on account thereof.

I do not see how the purchaser can be called upon to assume that a document is duly stamped, when, upon the face of it, such is obviously not the fact.

S. J. E.

No. 97.—*Clergyman creating Equitable Charge* (*ante*, p. 235).

The 13 Eliz. c. 20, which prohibits clergymen from charging their livings, is not, I think, affected by 1 & 2 V. c. 110, or 1 & 2 V. c. 106 (*see Sloane v. Packman*, 12 L. J. R., N. S., Ex. 423; *Walthers v. Crofta*, 20 L. J. R., N. S., Ex. 257).

C. F. W.

No. 99.—*Promise of Marriage* (*ante*, p. 235).

A woman cannot, under any circumstances, compel the fulfilment of a promise to marry her, but she may bring an action to recover compensation for the breach of such promise to marry her.

S. W. TURNER.

No. 100.—*Defamation* (*ante*, p. 235).

An action for libel would be the proper course to take herein.

S. W. TURNER.

No. 101.—*Investment of Deposit on Sale* (*ante*, p. 235).

I am of opinion, that whatever profit was made on the deposit cannot be recovered from the vendor's solicitor, and that he is entitled to such profit (*see Harrington v. Hoggart*, 1 B. & Ad. 577; *Lord Salisbury v. Wilkinson*, cited 8 Ves. 48; 3 Bro. C. C. 44; *Brown v. Southouse*, *Ibid.* 107; *Galy v. Driver*, 2 Y. & J. 549).

S. W. TURNER.

No. 101.—*Investment of Deposit on Sale* (*ante*, p. 235).

I am of opinion that the profit gained by the investment of the deposit

would belong to the vendor. The mere fact of the investment being made in the vendor's solicitor's name would not make any difference, as the investment was really at the vendor's risk. The purchaser would not be prejudiced or advantaged by any fall or rise in any securities on which the deposit might be invested (*Dart's V. & P.* 88). SIGMA.

No. 103.—*Verdict of "Not Proven"* (*ante*, p. 236).

This amounts to a verdict of not guilty, and prisoner cannot again be tried for the same offence. S. W. TURNER.

No. 103.—*Verdict of "Not Proven"* (*ante*, p. 236).

The verdict of "Not Proven" is, to all intents and purposes (except the name of the thing) a verdict of "Not Guilty." A second trial cannot be had after such a verdict. The prisoner can plead "*res judicata*," which is the name they give in the Scotch law to "*autrefois*" acquit.

C. F. W.

No. 104.—*Landlord and Tenant—Reparation* (*ante*, p. 236).

A covenant by the tenant to keep in repair the interior of a building will include the windows of such building, and the tenant would be bound under such covenant to repair the windows damaged by the hail-storm.

Of course it would be otherwise if the words "damage by tempest," were inserted in the covenant. SIGMA.

No. 104.—*Landlord and Tenant—Reparation* (*ante*, p. 236).

In this case the landlord is bound to repair the damage, and not the tenant. S. W. TURNER.

Vendors and Purchasers.

SPECIFIC PERFORMANCE.—*Chattels—Inadequacy—Auction—Jurisdiction.*—A court of equity will decree specific performance of a contract to purchase a chattel which is of a peculiar and unique kind. Where a purchaser of a chattel of a unique kind, with the worth of which he is well acquainted, stands by, and permits it to be set down at one-fifth its real value, knowing the ignorance of the vendor and valuer, and, after contract signed by the vendor, files a bill for specific performance of such contract, the Court of Chancery will not decree specific performance. Although, in the case of a contract to purchase a peculiar chattel, this court will, under peculiar circumstances of fraudulent advantages taken by the purchaser, refuse specific performance, it will not set aside the contract on a bill filed with that object by the vendor. Where a party sells by auction, the court will not relieve on the ground of inadequacy of price. *Falcke v. Gray*, 7 Week. Rep. 535.

IMPROVED LEASEHOLD GROUND-RENTS.—*Description of property Condition that the vendor had no reversion.*—The vendor, the

lessee of building land, erected houses thereon, and let them separately for the whole of his term subject to the payment of annual rents. He then put up these rents for sale, and described them as "improved leasehold ground-rents." One of the conditions of sale was, that the title would commence with the lease granted to him, and that purchasers were not to object to there being no reversion in him (the vendor): Held (assuming, that these were not improved leasehold ground "rents"), that a purchaser was precluded from objecting thereto by the condition of sale, and could not recover back his deposit on the ground of there being no reversion in him (the vendor). *Wills v. Catling*, 33 Law Tim. Rep. 145,

Articled Clerks.

SERVICE UNDER ARTICLES.—*Stamp.*—The whole period of five years' service of an articled clerk must be under written articles. In the following case it appeared, that an articled clerk served his articles regularly for four years, six months, and twenty-four days. He then, with the consent of his master, joined the militia for six weeks, when he was appointed a supernumerary surveyor of taxes, which employment he exercised for two years and three months, when he again joined the militia, and served for six or seven months. He then served regularly with his original master for a further period of five months and six days, making up the full period of five years, but the articles having expired, this latter service was under no written agreement. The court held this last service insufficient, but allowed the applicant to enter into fresh articles for the remaining period of five months and six days. *Ezparte Henry Smith*, 33 Law Tim. Rep. 125.

STATUTES OF 22 VICTORIA.

CAP. XVI. COMMISSIONERS TO ADMINISTER OATHS IN LONDON— BAIL IN ERROR, &c.

This is an act to remedy some defects in practice relative to the taking of oaths to affidavits within ten miles of London (which have hitherto been confined to the clerks of the common law judges), and in the Isle of Man and the Channel Islands, and the taking of country bail in error, and recognisances and bail on the revenue side of the Exchequer, by enabling the common law judges to appoint solicitors as commissioners within ten miles of London, and solicitors, and other proper persons, in the Isle of Man and the Channel Islands, to administer oaths, and to take and receive affidavits and declarations in common law matters, and authorising commissioners for taking special bail to take bail in error in the country, and also recognisances and bail on the revenue side of the Exchequer. The following are the provisions of the act *in extenso*:—

Whereas commissioners to administer oaths in proceedings in the superior courts of common law are granted by the judges, under the authority of 29 Car. 2, c. 5, "An Act for taking Affidavits in the Country, to be made use of in the courts of King's Bench, Common Pleas, and Exchequer," but such commissions are not granted to persons residing within ten miles of the city of London, except to the clerks of the judges of the said courts; and whereas the convenience of suitors and witnesses or deponents would be much promoted, expense saved, and the business of the courts expedited and facilitated, by authorising a certain number of attorneys of the said courts practising in different parts of London and its neighbourhood, and other fit and proper persons, to administer oaths in proceedings in such courts: Be it enacted, &c., as follows:

SEC. 1. *Power to judges to appoint commissioners to administer oaths within ten miles of London.*—It shall be lawful for the Lord Chief Justice and other the justices of the Court of Queen's Bench for the time being, or any two or more of them (whereof the Lord Chief Justice for the time being shall be one), and the Lord Chief Justice of the Court of Common Pleas and the rest of the justices there for the time being, or any two or more of them (whereof the Lord Chief Justice of the same court shall be one), and the Lord Chief Baron and the other barons of the Court of Exchequer for the time being, or any two or more of them (whereof the Lord Chief Baron for the time being shall be one), by one or more commission or commissions under the several seals of the said respective courts, from time to time, as need shall require, to appoint and empower as many persons as they shall think fit and necessary, such persons being attorneys of the said courts respectively, and practising within ten miles of Serjeants'-inn Hall, or other fit and proper persons, to administer oaths, and take and receive all and every such affidavit and affidavits, declarations or affirmations, as any person or persons shall be willing and desirous to make before any of the persons so empowered, in or concerning any cause, matter, or thing depending or hereafter to be depending or anywise concerning any of the proceedings in the said respective courts: Provided always, that nothing in this act contained shall in any way prejudice or affect the power of the judges of the said courts respectively to issue commissions to the clerks of the judges of the said courts, as has been heretofore practised, and all such commissions as last aforesaid, already or hereafter to be issued, shall and are hereby declared to be valid and effectual.

SEC. 2. *Style of commissioners—Power to take fees.*—The persons so appointed or empowered shall be styled "London Commissioners to administer Oaths on Common Law," and they shall be entitled to charge and take a fee of 1s. 6d. for every oath administered by them, subject to any order of the said courts respectively varying or annulling the same.

SEC. 3. *Power to judges to appoint commissioners for the Isle of Man and the Channel Islands.*—It shall also be lawful for the said Lord Chief Justices and Lord Chief Baron and the other judges and barons of the said courts respectively from time to time to appoint and empower, in manner aforesaid, any person or persons duly admitted as attorneys in any of the superior

courts at Westminster, and other fit and proper persons in the Isle of Man or in the Channel Islands, or any of them, to administer oaths and take declarations or affirmations in the said courts of common law, and such persons shall be styled "Commissioners to administer Oaths in Common Law for the Isle of Man," or "for the Channel Islands" (as the case may be), and they shall be entitled to charge and take the same fees as the said London commissioners.

SEC. 4. *Affidavits, &c., to be read and made use of as other affidavits.*—All affidavits, declarations, or affirmations taken or made before any commissioner appointed or empowered as aforesaid shall be read and made use of in the said courts respectively, to all intents and purposes, as other affidavits, declarations, or affirmations taken or made in the said courts now are; and all and every person and persons forswearing him, her, or themselves in such affidavit or affidavits, or falsely declaring or affirming in such declarations or affirmations, shall incur and be liable to the same penalties, and be deemed guilty of perjury, as if such affidavit or affidavits, declarations or affirmations, had been made or taken in open court, and may be prosecuted for the same, where such perjury was committed, or where such person or persons shall be apprehended on such a charge.

SEC. 5. *Provisions of 4 Will. & M. c. 4, as to bail in error, and to recognisances on the revenue side of the Exchequer, extended.*—"And whereas it is also desirable to extend the provisions 4 Will. & M. c. 4, 'An Act for taking Special Bails in the Country upon Actions and Suits depending in the Courts of King's Bench, Common Pleas, and Exchequer at Westminster,' to the taking bail in error upon proceedings commenced in the said courts respectively, and to proceedings on the revenue side of the Court of Exchequer:" Be it therefore further enacted, that the said recited act, and all and every the provisions therein contained, and also all commissions heretofore issued in pursuance thereof, and now in force, shall apply and extend to and authorise the taking of bail in error, and the recognisances of bail in error, in all actions and suits commenced in either of the said courts, in like manner as in the case of special bail in actions and suits depending in either of the said courts, to all intents and purposes whatsoever; and the said act, and all and every the provisions therein contained, and also all commissions heretofore issued in pursuance thereof under the seal of the Court of Exchequer, shall also apply and extend to and authorise the taking of all recognisances of every kind, and all bail as well in error as otherwise, on the revenue side of the Court of Exchequer.

CAP. XX. EVIDENCE IN SUITS PENDING IN COURTS OUT OF ENGLAND.

This act provides for the taking of evidence in suits and proceedings pending before tribunals in her Majesty's dominions in places out of the jurisdiction of such tribunals.

SEC. 1. *Order for examination of witnesses out of the jurisdiction in relation to any suit pending before any tribunal in her Majesty's possessions.*—Where upon an application for this purpose it is made to appear to any court or

judge having authority under this act, that any court or tribunal of competent jurisdiction in her Majesty's dominions has duly authorised, by commission, order, or other process, the obtaining the testimony in or in relation to any action, suit, or proceeding, pending in or before such court or tribunal, of any witness or witnesses out of the jurisdiction of such court or tribunal, and within the jurisdiction of such first-mentioned court, or of the court to which such judge belongs, or of such judge, it shall be lawful for such court or judge to order the examination before the person or persons appointed, and in manner and form directed by such commission, order, or other process as aforesaid, of such witness or witnesses accordingly; and it shall be lawful for the said court or judge by the same order, or for such court or judge, or any other judge having authority under this act, by any subsequent order, to command the attendance of any person to be named in such order for the purpose of being examined, or the production of any writings or other documents to be mentioned in such order, and to give all such directions as to the time, place, and manner of such examination, and all other matters connected therewith, as may appear reasonable and just, and any such order may be enforced, and any disobedience thereof punished, in like manner as in case of an order made by such court or judge in a cause depending in such court or before such judge.

SEC. 5. *Certain courts and judges to have authority under this act.*—Her Majesty's superior courts of common law at Westminster and in Dublin respectively, the Court of Session in Scotland, and any supreme court in any of her Majesty's colonies or possessions abroad, and any judge of any such court, and every judge in any such colony or possession who, by any order of her Majesty in council, may be appointed for this purpose, shall respectively be courts and judges having authority under this act.

CAP. XXX. CONFIRMATIONS AND PROBATES.

This is a short statute to amend the Confirmation and Probate Act, 1858.

SEC. 1. *Persons, &c., making payments upon confirmations and probates under Act of 1858, to be indemnified.*—All persons and corporations who, in reliance upon an instrument purporting to be a confirmation granted under the "Confirmation and Probate Act, 1858," and all persons and corporations who in reliance upon any such instrument which may be sealed under the authority of the said act with the seal of the principal Court of Probate in England or of the Court of Probate in Dublin, and all persons or corporations who, in reliance upon any instrument purporting to be a probate or letters of administration granted by the Court of Probate in England or Court of Probate in Dublin, and having endorsed or written thereon a certificate by the Commissary Clerk of Edinburgh, in the form in the said Confirmation and Probate Act prescribed; shall have made or permitted to be made, or shall make or permit to be made, any payment or transfer bona fide upon any such confirmation, probate, or letters of administration, shall be indemnified and protected in so doing, notwithstanding any defect or circumstance whatsoever affecting the validity of such confirmation, probate, or letters of administration.

SEC. 2. *Short title.*—This act may be cited as the “Confirmation and Probate Amendment Act, 1859.”

CAP. XXXII. REMISSION OF PENALTIES.

This act recites, that penalties which under penal statutes are made payable to parties other than the Crown cannot be remitted or pardoned by the Crown where no express provision has been made by the statute for that purpose, and it is expedient that the law as to the remission of such penalties should be amended and made uniform.

SEC. 1. *Penalties for offences may be remitted by the Crown although payable to parties other than the Crown.*—It shall be lawful for her Majesty (or in Ireland for the Lord-Lieutenant or other chief governor or governors of Ireland), to remit in whole or in part any sum of money which under any act now in force or hereafter to be passed may be imposed as a penalty or forfeiture on a convicted offender, although such money may be in whole or in part payable to some party other than the Crown, and to extend the royal mercy to any person who may be imprisoned for nonpayment of any sum of money so imposed, although the same may be in whole or part payable to some party other than the Crown.

CAP. XXXIII. CORONER'S BAILING.

This act supplies the much-needed authority to coroners to admit to bail persons charged by the verdict of the coroner's jury with the offence of manslaughter.

SEC. 1. *In cases of manslaughter the coroner may admit persons charged to bail.*—In every case in which a coroner's jury shall have found a verdict of manslaughter against any person or persons, it shall be lawful for the coroner or deputy coroner before whom the inquest was taken to accept bail, if he should think fit, with good and sufficient sureties, for the appearance of the person so charged with the offence of manslaughter at the next assize and general gaol delivery to be holden in and for the county within which the inquest was taken; and thereupon such person if in custody of any bailiff or other officer of the coroner's court, or in any gaol under a warrant of commitment issued by such coroner, shall be discharged therefrom.

SEC. 2. *Recognisances to be taken.*—In every case in which any coroner or deputy coroner shall admit any person to bail he shall cause recognisances to be taken in the form given in the schedule to this act, and give a notice thereof to every person so bound, and shall return such recognisances to the then next ensuing assizes, and such coroner or deputy coroner shall be entitled to such fees and charges as the clerks of justices of the peace are by law entitled to on admitting persons charged to bail.

SEC. 3. *Persons against whom coroner's juries have found verdicts of manslaughter to be supplied with depositions.*—At any time after all the depositions of witnesses shall have been taken, every person against whom any coroner's jury may have found a verdict of manslaughter shall be entitled

to have from the person having custody thereof copies of the depositions on which such verdict shall have been found, on payment of a reasonable sum for the same, not exceeding the rates of three halfpence for every folio of ninety words.

SCHEDULE.

Be it remembered, that, on the — day of —, in the year of our Lord —, *A. B.*, of — [labourer], *L. M.* of — [grocer], and *N. O.*, of — [butcher], personally came before me, one of her Majesty's coroners for the [county] of —, and severally acknowledged themselves to owe to our lady the Queen the several sums following; that is to say, the said *A. B.* the sum of —, and the said *L. M.* and *N. O.* the sum of — each, of good and lawful money of Great Britain, to be made and levied of their goods and chattels, lands and tenements respectively, to the use of our said lady the Queen, her heirs and successors, if he, or the said *A. B.*, fail in the condition endorsed.

Taken and acknowledged the day and year first above mentioned, at —, before me,

J. S.,

Coroner for the [county] of —.

Condition endorsed.

The condition of the within-written recognisance is such, that whereas a verdict of manslaughter has been found against the said *A. B.* by a jury empanelled to inquire how and by what means — came by [his] death; if, therefore, the said *A. B.* shall appear at the next Court of Oyer and Terminer and General Gaol Delivery to be holden in and for the [county] of —, and there surrender himself into the custody of the keeper of the gaol there, and plead to such inquisition, and take his trial upon the same, and not depart the said court without leave, then the said recognisance shall be void, or else the same shall stand in full force and virtue.

CAP. XXXIV. COMBINATIONS OF WORKMEN.

This is an act to amend and explain the 6 G. 4, c. 129, repealing the laws relating to the combination of workmen. It recites the 6 G. 4, c. 129, and that different decisions have been given on the construction of the said act.

SEC. 1. *Agreements in certain cases not to be deemed "molestation" or "obstruction," within the meaning of the recited act.*—That no workman or other person, whether actually in employment or not, shall, by reason merely of his entering into an agreement with any workman or workmen, or other person or persons, for the purpose of fixing or endeavouring to fix the rate of wages or remuneration at which they or any of them shall work, or by reason merely of his endeavouring peaceably, and in a reasonable manner, and without threat or intimidation, direct or indirect, to persuade others to cease or abstain from work in order to obtain the rate of wages, or the altered hours of labour so fixed or agreed upon or to be agreed upon, shall be deemed or taken to be guilty of "molestation" or "obstruction," within the meaning of the said act, and shall not therefore be subject or liable to any prosecution or indictment for conspiracy. Provided always, that nothing herein contained shall authorise any workman to break or depart from any contract or authorise any attempt to induce any workman to break or depart from any contract.

Articled Clerks.

CORRESPONDENCE ON MOOT POINTS.

GENTLEMEN,—It is a well-known fact, that many solicitors who have articled clerks strongly object to their becoming correspondents on moot points, or even writing legal or other articles in newspapers, magazines, &c.; and it is no uncommon thing, where a solicitor sees his clerk is disposed to become a writer in any publication, to raise a strong declamation against it: assuming various reasons for the objection, but loss of time being always one of them—but this more particularly with regard to moot points. It is no uncommon thing (but with me and many others a very common one) to be actually ridiculed for even expressing a favourable opinion upon the subject. Not long ago, the gentleman to whom I was then articled (I am now with his town agent) advised me to send the following “moot” point to the CHRONICLE Office for insertion:—“A fiddler, while playing near a river, dropped his fiddle therein. *Quære*, can he maintain an action on the ‘case?’” (wretched attempt at wit, you’ll say, for I confess I see no striking analogy at all). I could furnish you with various others, but the above is sufficient.

I am now, as I have said, with the town agent of my late preceptor, and, as he has no such stupid objection to the correspondence system, I propose shortly to become one of your contributors. I appeal to your attachment to the cause of articled clerks to insert the enclosed letter in next month’s CHRONICLE; and I have no hesitation in saying that its insertion will prove the truth of my statement, by invoking the corroboration of others similarly placed to

Your obedient servant,

T. W. G.

Though many solicitors of ability and eminence have given it as their opinion that the recent method adopted by your correspondents on moot points—under, not only the old, but also the new system of correspondence—necessarily shortens the period which should be devoted to study, the contrary opinion may be said to be too well established to be easily shaken; and I think the onus lies on these gentlemen of disclosing a sufficient reason for the assertion.

Granted the framing of moot points, or answers to them, necessarily requires a certain portion of a student’s time, thought, and attention; still, I contend that this has for its object the further improvement, in general, of the student’s legal knowledge, and gives him an aptitude in expressing his opinions on paper, a task which, though apparently easy, is well known to be directly the reverse to those unaccustomed to the practice of expressing their thoughts in writing. How often is an articled clerk heard to

exclaim, "I know the answer to the question, but can't clearly express my opinion in writing, or even by word of mouth?"

Let us look at the case a little closer, and suppose an articted clerk to have "alighted" on a question to which, within his own mind, he could give a clear and sufficient answer, but which, when he comes to reduce to paper, he is at a loss how best and clearly to express his thoughts.

An answer is considered to be a clear and conscientious compendious statement of the correspondent's opinion upon the point mooted, conveyed in such a manner as to enable the querist to see at once the force and aptness of the correspondent's opinion and assertions, and, taking the generality of answers in the CHRONICLE, they are, on the whole, good and well chosen, almost in every case being an answer, in clear and distinct words, to the question mooted; yet I will venture to say, that if such answer had been given by some other articted clerk not used to giving written expression to his thoughts, there would have been a marked difference between the two: both, perhaps, correct, and written after perusing *the same authority*, yet, while the meaning of the one is clear and distinct, that of the other is, to a certain extent, the reverse.

But, to conclude—let not articted clerks be discouraged by the mere antipathy of their preceptors to the correspondence system, but, with one resolve, let each send up his name to the CHRONICLE Office for enrolment among the List of Correspondents on Moot Points, and I venture to assert that not one will regret the trouble and time bestowed on the subject, or that it had not the express sanction of their respective preceptors. Let each articted clerk, then, be "up and doing," bearing in mind the truth of the maxim,

"Vigilantibus non dormientibus Jura subveniunt."

There are many interesting and important points which, upon some future occasion, it will be useful to discuss, under the head of "Articted Clerks," &c.

T. W. G.

Vendors and Purchasers.

DOWER TRUSTEE.—*Specific performance—Concurrence of dower trustee—Costs—Appeal.*—Purchaser held to be entitled to concurrence of dower trustee, and objection that he was a necessary party to the conveyance allowed, but a suit for that purpose deemed frivolous. *Quære*, as to the existence now of the rule that there can be no appeal for costs. *Collard v. Roe*, 7 Week. Rep. 623.

RIGHT OF PRE-EMPTION OF LAND UNDER WILL.—*Sale of land to railway before time for exercise of right—Money substituted for the land.*—The following is an important decision by the Lords Justices on Appeal respecting the exercise of a right of pre-emption where the land has been taken by a public company:—It appeared that a testator, by his will, gave to his son C. the right of purchasing, after the death of his

widow, who was tenant for life of his whole residuary real and personal estate, certain portions of his real estate for £450; and if the son did not elect to purchase at that price, they were to be sold. Before the death of the widow, a railway company, under the compulsory powers conferred by its act of Parliament, bought the land for £700; which was paid into court. On the widow's death, the executors petitioned for payment of this sum to them, and Stuart, V. C., made the order. The son C. appealed, and it was held (reversing his Honour's decision), that the right of pre-emption attached as much to the money into which the land had been converted as it would have attached to the land itself, if not converted. *Re Cant's Estate*, 33 Law Tim. Rep. 280.

LAW REFORMS AND THE PROFESSION.

We take the following from the last annual Report of the Council of the Incorporated Law Society:—

“ Alterations in the Law.

“ In proceeding to communicate to the members of the society the general nature and result of the measures which have been adopted since the last annual meeting, as well in regard to the interests of the profession at large as of the society and its affairs, the council in the first place propose to notice the statutes which have been passed during the year, so far as they relate to the law and practice of the courts.

“ The statutes which were enacted between the last annual meeting and the close of the session of 1858 were as follows :

The Joint Stock Companies Amendment Act, 20 & 21 Vic. c. 60.

The Landed Estates Court Ireland Act, c. 72.

The Settled Estates Act Amendment, c. 77.

The Drafts on Bankers Act, c. 79, relating to crossed cheques.

The Joint Stock Banking Companies Act, c. 91, on the principle of Limited Liability.

The Copyholds Act Amendment, c. 94.

The Court of Probate Act Amendment, c. 95.

The Divorce and Matrimonial Causes Act Amendment, c. 108.

“ During the progress of these measures through Parliament, they were carefully watched by the council, with a view to the introduction therein of such amendments as the interests of the profession and the public appeared to require. The efforts of the council were on many occasions attended with success; and they may refer in particular to the Probate and Divorce Court Amendment Bills, in which various alterations were made at their suggestion in reference to the qualifications of the officers and practitioners in those courts. They could not, however, obtain the correction of those enactments by means of which the district registrars are enabled to practise as proctors and solicitors in testamentary matters; and this defect in the system will probably continue until they are remunerated by salaries instead of fees, as are the registrars in the principal registry in London.

“ Owing to the dissolution of Parliament, but few Acts have received the

Royal assent during the present year. So far as they concern the profession, they are as follow :—

“The affidavit by Commission Act, 22 Vic. c. 16, enabling the judges to grant commissions to attorneys to administer oaths in common law within ten miles of London. This bill was prepared by the council, and introduced into the House of Commons by Mr. Bovill, to whose assistance and exertions during its progress through the House the society and the profession are much indebted.

“The evidence by Commission Act, 22 Vic. c. 20, providing for taking evidence in this country in suits and proceedings pending before tribunals in her Majesty's dominions in places out of the jurisdiction of such tribunals.

“The County Courts Act Amendment, c. 8, repealing the 32nd section of the 9 & 10 Vic. c. 95, and authorising high bailiffs to be appointed for the county courts in Southwark and Westminster, as for other county courts.

“New Bills in Parliament.”

“The bills introduced into Parliament between the commencement and dissolution of the first session of this year, and which did not pass into law, were as follow :—

	<i>By whom Introduced.</i>
Law of Property and Trustee Relief	Lord St. Leonards.
Transfer of Real Estate.....	Lord Brougham.
Debtor and Creditor	Lord Chancellor.
Law of Evidence	Lord Brougham.
Trading Companies Winding-up	} Lord Chancellor
Court of Chancery Accommodation.....	
Vexatious Indictments	} Lord Campbell.
Juries in Civil Causes	
Titles to Landed Estates	} Solicitor-General.
Registry of Landed Estates	
Real Estates Intestacy	Mr. Locke King.
Bankruptcy and Insolvency.....	Lord John Russell.
Petition of Right	Mr. Bovill.
Law Ascertainment	Mr. Dunlop.
Court of Probate Site	Lord John Manners.
Admiralty Court	Mr. Hadfield.

“Amongst these, the most important in regard to the interests of the profession were probably the two introduced by Sir Hugh Cairns, the late Solicitor-General, for establishing a court for the investigation of titles to landed estates, and for the registry of titles after investigation in the Landed Estates Court.

“Several objections to the details of these bills, as originally framed, were brought under the notice of the Solicitor-General by the council, and on many points he at once acceded to their suggestions.

“The council have been in communication with various provincial law societies on the subject of these bills, the progress of which was, however, stopped by the abrupt termination of the session. Should they again be introduced, the council will use their best efforts to procure such further alterations as may remove any remaining objections thereto.

“With regard to the Law of Property and Trustees Relief Bill,

introduced by Lord St. Leonards, and which passed the House of Lords, the council are of opinion that the general object of the bill is highly beneficial to the public, and it will have the effect of obviating many legal difficulties in the title to freehold and leasehold property, which are of constant occurrence, and are attended with heavy expenses, both to vendors and purchasers.

"But they strongly objected to the 28th clause, which interposed new and severe penalties in cases of fraud, for which sufficient punishment is provided by the existing law, and the enactment of which would, in the opinion of the council, have a prejudicial effect on the interests of the public.

"The council also objected to the 25th clause of the bill, as in effect repealing the provisions of the 1 & 2 Vic. c. 110, and the 2 & 3 Vic. c. 11, which make registered judgments operate as charges upon land from the date of registration. Under these provisions no injury can accrue to a purchaser or mortgagee, who exercises the most ordinary degree of caution, as a search of the register before payment of his purchase or mortgage money will afford him all the protection he can reasonably require.

"The council further suggested, that the 30th clause (which provides that trustees and executors, making payments under a power of attorney, should not be rendered liable by the death of the party giving the power) should be extended to all persons acting *bonâ fide* under powers of attorney, without notice of the death of the party who gave the same.

"Amongst the bills above enumerated was one brought in by Mr. Hadfield, for opening the Court of Admiralty to the bar generally, and to attorneys and solicitors. On this subject the council addressed the Lord Chancellor, the First Lord of the Admiralty, and the Secretary of State for the Home Department, pointing out the reason why the exclusive privileges of the advocates and proctors of the High Court of Admiralty should cease, as similar privileges have already ceased in regard to the Courts of Probate and Divorce—adequate compensation being given to the persons thus deprived of privileges, long enjoyed by them, on the same principles on which compensation has already been awarded under the Probate and Divorce Acts.

"Amendment of the Law of Attorneys.

"Since the passing of the Attorneys and Solicitors' Act, in 1843, upwards of fifteen years ago, the council have had much experience in carrying its provisions into effect, and have frequently had under their consideration improvements which might be desirable in reference to the qualifications of applicants for admission on the roll of attorneys, their education and examination, the registration of attorneys, the prevention of mal-practice, and the restraining of unqualified persons from encroaching on the rights and privileges of the regular members of this branch of the legal profession, and various other points of practical moment.

"The results of this experience they have thought it right to embody in a bill, the preparation of which has occupied much time and labour on the

part, first, of a special committee of their body, and afterwards on that of the council at large.

"An outline of the proposed bill, arranged so as to show at one glance the alterations which its provisions would effect in the existing law, was submitted to the judges of the superior courts, and extensively circulated amongst the provincial law societies, and copies have been laid on the hall table for the consideration of the members of the society.

"It was expected that the bill would have been introduced into the House of Commons by Mr. Walpole and Mr. Bovil, who had kindly undertaken to support it; but the state of public business prevented its introduction into the last Parliament. It is now proposed to submit the measure, in the first instance, to the House of Lords, and the council have the satisfaction to state that the Lord Chancellor (who, as Lord Chief Justice, had expressed his approbation of its provisions) has consented to introduce it into, and to take charge of it in its passage through, that House. [The bill was not passed.]

"Concentration of the Courts and Offices.

"This subject has engaged a large share of the time and attention of the council during the past year, and its great importance to the due administration of justice has been earnestly and repeatedly pressed by them on the consideration both of the Government and the Legislature.

"With this view, the council have extensively circulated a pamphlet, prepared with great care by some of its members, and embodying their views on the whole subject, and a correspondence took place between the President and the Chief Commissioner of Public Works, a copy of which is appended to the present report.

"Bills were introduced into Parliament, one by the late Lord Chancellor, in the House of Lords, for enabling the Society of Lincoln's-inn to erect new courts of equity and chambers for the judges thereof within the inn, by the aid of the 'Suitsors' Fund;' the other by the Chief Commissioner of Public Works, for furnishing land and houses, and erecting buildings in Doctors' Commons for the use of the Courts of Probate and Divorce.

"The council considered that both these measures would have been highly mischievous in their effect and operation, not only as providing a mere partial and imperfect remedy for a general evil, but because they would have effectually prevented that concentration of all the courts and offices in one central situation, which the council believe to be imperatively called for; they therefore presented petitions, under the seal of the society, against both bills, and they eventually succeeded, not only in arresting the progress of these measures, but in procuring the appointment of a Royal commission directed to Sir John Taylor Coleridge, Sir William Page Wood, Sir George Cornewall Lewis, Lord Wynford, Dr. Phillimore, and Mr. John Young, the president of this society, for the purpose of inquiring into 'the expediency of bringing together, into one place or neighbourhood, all the superior courts of law and equity, the Probate and

Divorce Courts, and the Court of Admiralty, and the various offices belonging to the same, and into the means which exist, or may be supplied, for providing a site or sites, and for erecting suitable buildings for carrying out this object.'

'The council received great assistance in this object from Mr. Alexander Beresford Hope, who kindly undertook to present their petition to the House of Commons, and who exerted himself, both with the late Government and otherwise, in furthering the views of the council, in which he took a warm and lively interest.

"Practical Suggestions and Amendments.

"Examination of witnesses in Chancery.—The improvement which has been effected in the mode of taking evidence in Chancery, by the viva voce examination of witnesses before the examiners, has been attended with some inconveniences and defects, owing to the length of time occupied in the examination and cross-examination of the witnesses, and the difficulty of obtaining continuous appointments to complete the examination, and the increased expense caused by the appointment of council on both sides, not only for a single plaintiff or defendant, but for several other parties to the suit. An additional number of examiners might remove or diminish the first grievance, but no sufficient remedy for the second, it is apprehended, can be found, except by increasing the number of equity judges, and enabling each judge, in cases of conflicting evidence, to hear the witnesses himself, to decide on questions of the admissibility or rejection of evidence (which is not within the jurisdiction of the examiners); thus excluding irregular, incompetent, or irrelevant testimony, abridging unnecessary examinations, and preparing the case for a more satisfactory hearing and determination.

"Lunacy costs.—The attention of the council has been called to the fees allowed to solicitors of the Court of Chancery in matters of lunacy. It had been supposed, and there can be no doubt it was intended, that the new scale of costs, adopted in 1856, would apply to all proceedings in courts of equity, but it appears that the taxing masters are of opinion that the order in question does not in terms extend to proceedings in lunacy, and that they do not consider themselves at liberty to act thereon.

'It follows that the remuneration allowed in proceedings in lunacy continues to be regulated by the old orders in Chancery, and thus a principle which has been in fact condemned by the new orders, is still maintained and applied in one of the branches of the court.

'The council, therefore, respectfully submitted to the late Lord Chancellor that this anomaly should be remedied, and that the remuneration of the solicitor, on the broad principle of quantum meruit, should be made to apply alike in all the branches of the court; and the Lord Chancellor was solicited to issue an order directing the application to proceedings in lunacy of the orders of the court by which fees generally are regulated. The

suggestion has been referred by the Lord Chancellor to the officers of the court.

"Bankruptcy costs.—The council having been informed that alterations were proposed in the bankruptcy scale of fees, applied to the late Lord Chancellor for leave to give the council an opportunity of offering observations upon the proposed alterations before they were finally approved by his Lordship. The apprehended reductions have not been made.

"Admiralty Court Commissions to administer Oaths.—The judge of the High Court of Admiralty being empowered, under the 17 & 18 V. c. 78, s. 3, to appoint commissioners to administer oaths in that court, has invited the assistance of the council in the performance of this duty, and notice of such applications is accordingly sent to the council by the registrar of that court, in the same manner as is done in reference to commissioners for administering oaths in Chancery.

"Probate Court Fees and Charges.—The 21st section of the 20 & 21 V. c. 77, enacts that no registrar of the principal registry, nor any officer or clerk in the principal registry, shall, directly or indirectly, practise as an advocate, barrister, proctor, solicitor, or attorney, or receive or participate in the fees of any other person so practising. But this prohibition does not extend to the registrars and officers of the district courts.

"It appears to be the practice for district registrars to act as proctors, solicitors, or attorneys, by receiving instructions from the parties, and to charge them with the usual fees of a proctor or solicitor. To justify them in so acting, they should be duly admitted on the roll, and take out annual certificates. Complaints of the infringement of the law have been made to the council, and they have informed the parties that, if any case can be substantiated of a district registrar acting as proctor and solicitor without an annual certificate, it would be a proper case to represent to the judge, and to the Solicitor of the Inland Revenue, who might institute a prosecution for the recovery of the penalties for such illegal practice.

"As between the provincial attorney and the London agent, in probate and administration cases, the council, upon a reference to them, have expressed their opinion that, in the absence of any special agreement, the town agent is entitled to a moiety of the ad valorem fee specified in the schedule to the act of Parliament.

"New Rules and Orders.—The following is a list of the rules and orders of court made since the last general meeting, and printed for the use of, and sent to, members of the society :—

In the Court of Chancery.

12th February, 1858.	Drawing up Orders and Petitions in Causes.
May, 1858.	Commission to administer Oaths.
12th July, 1858.	Petitions for re-hearing an Appeal.
February, 1859.	Directions to Solicitors as to Papers to be left at the Registrar's Office.
1st March, 1859.	Interlineations in Affidavits.
30th March, 1859.	Regulations at the Registrar's Office.
4th April, 1859.	Trials before the Court, with or without a jury.
	Vacation business at Judges' Chambers.

<i>In the Probate Court.</i>	
18th October, 1858.	Further Rules and Orders in Non-contentious business and in Contentious business.
12th November, 1858.	Additional and amended Fees.
28rd February, 1859.	Further Rules and Regulations. Fees payable in Stamps.
<i>In the Divorce Court.</i>	
3rd December, 1858.	Further Rules and Regulations, and additional Tables of Fees. Fees payable in Stamps.
<i>In the Common Law Courts.</i>	
5th July, 1858.	Costs on Appeals.
12th July, 1858.	Business at the Judges' Chambers.
14th December, 1858.	Abolition of certain Court Fees.
<i>In the County Courts.</i>	
4th February, 1858.	Practice under the Probate Act, 20 & 21 Vic. c. 77.
8rd January, 1859.	Amendments of Rules, Orders, and Forms. Registry of Orders of Protection of Property of deserted Married Women.
8th February, 1858.	Regulations for the admission of Solicitors and their registered Clerks to practise in the Debtors' Prison.

" The Examination and Registration of Attorneys.

" In the course of the last four terms 443 candidates have been examined, of whom 392 were passed and 51 postponed. To the first class of the successful candidates eighteen prizes were awarded, and seventeen certificates of merit were granted to the second class, besides a favourable notice by the examiners of thirteen who were above the age of twenty-six. The names of these gentlemen are given in an appendix to this report.

" The council have received several suggestions relating to the examination in the law and practice of the courts, and as to further extending the scope of such examination, dividing the questions into four essential branches, and allowing the candidates two days to write their answers.

" These and other proposed improvements are under the careful consideration of the council and the special committee of their body, by which they are aided.

" Usages of the Profession in Conveyancing matters.

" Several disputed points in conveyancing practice have been submitted to the council during the past year, and their opinions are recorded in a book in the secretary's office. They have also decided some questions which have been referred to them between solicitors, who might otherwise have incurred delay and expense in appealing to the Court.

" When a sufficient number of these points have been collected to be generally useful to practitioners, the council will take into consideration the expediency of revising and publishing them.

" Complaints of Malpractice.

" During the past year, the council regret that they have received several complaints of malpractice by members of the profession, and which they have investigated so far as their means of information extended. In one of these cases, the person accused has been struck off the roll of all the courts; in two other cases, laborious investigations are in progress before

the masters; and in two more, directions have been given to collect the requisite evidence.

"Amongst the encroachments on the rights of the regular practitioner may be noticed the formation of societies called 'Trade Protection Societies,' on the legality of which the opinions of counsel have been taken. One of the objectionable incidents connected with these societies is, that solicitors are induced to lend their names as the solicitors or secretaries of such societies, and are content to receive fees of an amount far inferior to the usual scale of professional charges. In other cases, where the secretary is not an attorney, some practitioner is found who, for the sake of an introduction to the creditors, is willing to conduct legal proceedings under an agreement to make no charge except for disbursements, and to depend for remuneration in those cases where the debtors are able to pay the costs of an action.

"The council have also received complaints against persons assuming to act in conveyancing business who were in no respect qualified to do so, and they have submitted the evidence in such cases to the Solicitor of the Inland Revenue. In one of them a prosecution by the Attorney-General was instituted, and the penalty imposed by the commissioners having been paid the proceedings terminated. In another case an accountant appeared to have incurred penalties under the Stamp Acts, by preparing a deed of assignment for the benefit of creditors, but on investigation it turned out that the council could take no proceedings against him with effect.

"They have also received several complaints against law stationers and others for transacting various matters usually within the province of solicitors. Where they are associated with any practitioner who lends his name in taking proceedings and allowing the unqualified person to participate in the profits, an application to the court might be made; but of course the evidence must be clear and satisfactory."

THE ALLEGED UNCERTAINTY OF THE LAW.

WE feel great pleasure in being able to present to our readers a reading or lecture on the alleged uncertainty of the law, delivered some years ago by an American lawyer. It may suggest to professional men in this country, that they would be acting wisely if they were to endeavour to reason away the prejudice which exists on the part of most *lay gents* against the law and lawyers, and which is fanned from time to time into flame by the exertions of *funny* writers in so-called comic publications. The lecture may serve as a model for other discourses for such purposes, and will be found to contain, besides, some useful points deserving the attention of the student, if not of the practitioner.

"Our mercantile friends will permit me to remark, that the uncertainty so often complained of in commercial law is not to be laid to the charge of the science itself; the law-merchant, as it is termed, has in a peculiar

manner been moulded upon the usages of merchants themselves. Before the time of Lord Mansfield, commercial law in England was without any form or system; and that great judge, as every lawyer and every commercial man knows, never undertook to settle a new question without obtaining from intelligent merchants the necessary information of the usages of trade; and where those usages were well settled, the rule of law was made to conform to them; but if, as was too often the case, the usage of merchants themselves was uncertain, he was obliged to prescribe to the juries in his court such rules of decision, as his clear and powerful mind considered to be best adapted to the intercourse of the commercial world. As to the uncertainties, therefore, which still exist in this branch of the law, the members of our profession think, that a part of the reproach, if it is such, must be borne by our commercial brethren. Sure I am, that the enlightened judges of our country are quite as solicitous, as the eminent English judge before mentioned, that our commercial law should be founded upon well-settled commercial usage.

"It may not be uninteresting to pause a moment and consider to what causes it is owing, that any degree of uncertainty should exist in the laws. The present occasion allows me to take only a general and hasty review of some of them.

"Now it is a remarkable fact, which I am sure will surprise some of you, that, generally speaking, the greatest degree of uncertainty and the most litigation have prevailed in those cases where a contract or other legal instrument happens to have been planned and drawn up by the parties themselves, and, as they have supposed, exactly according to their intentions, without regard to the established forms of language generally used by lawyers; while, on the contrary, few suits, comparatively speaking, arise upon instruments drawn up in the settled language of the profession. This remark would, at first blush, seem almost paradoxical; that in the very cases where the parties themselves, whether merchants, mechanics, physicians, divines, or others, are at full liberty to frame their own contracts, wholly unfettered by technical language, their should be the most abundant causes of controversy; yet such is the fact. It is accordingly a subject of daily remark, for instance, how few disputes, comparatively speaking, originate in the construction of deeds, which are drawn according to established legal phraseology; and, on the other hand, how fruitful a source of litigation we find in the construction of last wills, which, from the nature of the case, cannot ordinarily be made according to any prescribed form.

"This greater degree of uncertainty in last wills arises from the circumstance of their being drawn up, for the most part, by unprofessional persons; as, the testator himself; or, frequently, the attending physician, called in to render this service, when approaching death will not allow time to consult a professional adviser.

"In consequence of the peculiar circumstances of infirmity and urgency under which last wills are frequently made, and from the solicitude of the law that the intention of a testator should be carried into effect,—in whatever words that intention may be expressed,—the courts of law have felt themselves obliged to give to many expressions in wills a different effect

from that which the same words would have in deeds. For example; where we intend to convey the absolute title and interest in a piece of real estate, that is, what is familiarly called the fee, it is indispensable, by the rules of the common law, and also by the express provisions of our own ancient colonial ordinances, that a deed of such estate should run to a man and his heirs; without which word *heirs* a deed would convey only an estate for life. But, on the contrary, in a will, an estate in fee may pass by many different forms of words; in short, by almost any expressions which clearly and plainly indicate that such was the intention of the person making the will.

"If any one present should have the curiosity to look for an example in illustration of this rule of law, they will find a striking one in the case of the great British statesman, Edmund Burke. That illustrious man, at an advanced age, and after the habits of a long life, constantly employed in public affairs, had withdrawn his attention from the mere formalities of ordinary business transactions, undertook (August 11, 1794) to draw up his own will, which he also states to be all written with his own hand. Having lost that only son, of whose eminence he had formed the highest expectations,—and to whose early death he never alludes without an expression of that anguish which none but a parent can ever know,—he had no near friend remaining, except her whom he characterises as his 'entirely beloved and incomparable wife;' to whom he bequeathed the whole of his property, real and personal. In making this disposition of his estate, he uses the following terms:—'To her sole uncontrolled possession and disposal, as her property, in any manner which may seem proper to her to possess and dispose of the same, whether it be real estate or personal estate, by her last will or otherwise. It being my *intention* that she may have as clear and uncontrolled a right and title thereto and therein as I possess myself, as to the use, expenditure, sale, or devise. I hope these words are sufficient to express the absolute, unconditioned, and unlimited right of complete ownership I mean to give her to the said lands and goods; and I trust, that no words or surplusage or ambiguity may vitiate this my clear intention.'

"This full and redundant phraseology, so strongly indicating his intention, would, without doubt, as he himself supposed, have been held sufficient in a will to pass the estate to his wife and her heirs. But, to leave no room for doubt, he afterwards (July 30, 1795) made a codicil to his will, which is introduced with this remark: 'On reading the above will, I have nothing to add, or essentially alter; but one point may want to be perfected and explained. In leaving my lands and hereditaments to my wife, I find that I have omitted the words which in deeds create an inheritance in law. Now, though I think them hardly necessary in a will, yet, to obviate all doubts, I explain the matter in a codicil, which is annexed to this;' and he does then accordingly devise the same lands over again, to his 'wife Jane Mary Burke, and her heirs, for ever.'

"I have gone into these particulars, in the case of this will, from the double motive—of illustrating an important rule of law by an example likely to be remembered, and at the same time to exhibit the superior con-

ciseness and precision of established legal language over that which is not professional. In the instance before us, Mr. Burke, by departing from the settled language of the law, actually employed an hundred and fifteen words to express just the same thing that might have been said (and was afterwards said in his codicil), with absolute certainty, in one single word—which, though technical, is now familiar to every man—the word *heirs* (for this will, see Bissett's Life of Burke, vol. ii, p. 440, 2nd ed.).

“The great source of uncertainty in law is, the intrinsic ambiguity of language, by which we must express our intentions. This ambiguity is often found in the writings of men who are even well skilled in the use of language; much more, then, must we expect it in the illiterate and inexperienced. Now this ambiguity of language cannot be removed by common consent, in any community, where each man has an equal right to decide upon the construction of the words of a language; but, as it is absolutely indispensable, for the security and peace of society, that the meaning of laws and contracts should be settled, in order that every man may enjoy his rights, there remains no resource for us but to refer all questions of this nature to the judicial authority of the country, and we then arrive at certainty, only by the positive decision of a tribunal, which gives to doubtful words a determinate signification, and thus lays the foundation for a technical language, merely because the individuals of the community cannot, or will not, agree among themselves to affix a determinate meaning to their words.

“And here I ask permission to say one word in vindication of the law from another frequent complaint connected with its uncertainty:—that its inherent obscurities are still further darkened by a *technical* language which is altogether unintelligible to people in general.

“It is true that the law has its technical terms; and so has every science and art, for none can be well understood and practised without them. Let us consider for a moment if their condition is, in this respect, better than that of the law.

“The mathematician is allowed, without any complaint, to use his technical language, and instead of an easy and simple nomenclature, which we all fancy we could make for him, he must have his cissoids and conchoids, his parabolas and hyperbolas, his trapeziums and pentagons, his tetrahedrons, dodecahedrons and parallelopipedons, his parallaxes, librations, and sisygies, with numberless other names quite as strange and unintelligible as those which are popularly called the crabbed terms of the law.

“The chemist and mineralogist are permitted each to have his alkalis and gases, his hydrogen and oxygen, his quartz, gneiss, and hornblend, with a thousand others of a similar character less intelligible than these, only because they are of less frequent recurrence.

“Why should not the mechanic, too, in all branches of the arts, be required, as well as the lawyer, to relinquish the use of his technical language? In every daily newspaper we see advertisements of all descriptions filled with technical names. Our printer must talk of their founts of type, their forms, their register, their friars, monks, and other strangely applied names, without end; and our paper makers of their demy, pot, and foolscap.

In the merchants and traders' professions, too, persons not skilled in the business are as much perplexed with their various technical names as with law terms ; and the East Indian names of sannas and gurrabs, sinchaws and chappas, ponjees and munjeets, fall upon the ear of the uninitiated with as little meaning as the Norman French of our black letter law books. In the nautical art, who but professional seamen can comprehend the extraordinary dialect which is so familiar and so necessary to them ; their lanyards and halliards, their clues and earings, and their studding-sails, or steadying-sails, or steering-sails, whichever is their true name ; for on this point there is as much uncertainty among nautical men as upon any subject of law. Even in the necessary art of clothing our bodies, the professors talk most familiarly of the qualities and colors of their goods in a tongue which to all other persons is an unknown one ; and, as we should say, with some inconsistency too, when they tell us of their blue blacks, and—worse than all—their invisible greens ; and what, I may add, can be more thoroughly unintelligible to the uninitiated than the technical language of the reports of female and other fashions, which we see daily in our journals ? In the no less necessary art of preparing meats and drinks for our bodily sustenance, who would undertake to master all the technical names which occur in the formidable lists of those articles, that are exhibited to the longing eye of the epicure in our celebrated public houses ? But I leave this enumeration—which might be indefinitely extended—and return to our principal subject.

“ The cases of ambiguity in legal instruments are principally of two classes : a want of accuracy in describing the things which are the subjects of a will, or deed, or other writing, or, the persons to whom such things are bequeathed or conveyed. I will give you examples of each of these classes.

“ The humorous case in Pope's works, which was the invention of Pope and his legal friend Fortescue, though in itself a pure fiction, is but a true picture of the difficulties which daily occur in courts of justice. I shall be pardoned for introducing into a grave discussion a mere piece of pleasantry ; but it illustrates the subject as strongly as any real case, and may be new to the younger part of my audience, who have grown up since the works of Pope and Swift, and their illustrious contemporaries were driven from our library-tables by the promiscuous and motley products of a daily press.

“ We are told in the case alluded to, that Sir John Swale by his last will, among other things, made the following bequests :—‘ Out of the kind love and respect that I bear unto my much honored and good friend Mr. Matthew Stradling, gentleman, I do bequeath unto the said Matthew, all my black and white horses.’ Now the testator died leaving six black horses, six white ones, and six that were each black and white, or, as they are called, pied horses. The question, therefore, was whether these pied horses were included in this legacy ; and amusing arguments are made up for the counsel on both sides. The court, we are told, were long in doubt ; as well they might be ; and, if I am not much mistaken, every one of you would be as much at a loss to decide the question, if it were now seriously submitted to you as judges or jurors.

“ After this case of uncertainty in the things described, I will give you

an instance, and a real case too, of uncertainty in respect to the persons, who were intended to be the objects of a testator's bounty.

"Not many years ago, in a neighboring county where I lately resided, a wealthy farmer, with the most benevolent intentions possible, gave a legacy for the benefit of the poor in his own town; it was not, however, to go to all the poor of the place, but only to those who were of the household of faith. Now I ask every one who hears me, how it would be possible for ~~the~~ court or jury to designate the persons who were to have the benefit of this legacy? Suppose that well-intentioned testator could have had foresight enough to leave a legacy to those members of your association who were of the household faith. Who among them could make a claim to the bounty? And by what proofs could the claim be supported?

"Of this class also are legacies like the following: to twenty of a man's poorest relations; to the ten best men in a town; to the son of such a man, and he happens to have several; to a man's son William, when he happens to have two sons bearing that name. In this class of cases I recollect hearing of one, in a neighboring town, where a warm-hearted citizen, in his enthusiastic admiration of that patriot who is the boast of our country, made a resolution to give to all his sons, let them be ever so many, the name of George Washington, and he has, I am told, thus far carried his resolution into effect, having at this time two sons of that name. If he should be blessed with a numerous male offspring, his case will assuredly require great care, when the worthy father shall come to distribute his estate among them by his last will.

"May I be allowed to mention another case of uncertainty as to the person; which shows the extreme embarrassment experienced by courts of law in such cases, and at the same time strongly exhibits the difficulties resulting from the peculiar dispositions and passions of men.

"About seventy years ago a farmer of eminence, in the county before mentioned, devised to his son and his male issue a large and valuable real estate by that form of gift which is called an entailment; the effect of which, in this case, was that the estate would go to the eldest son in each successive generation. Now the first born issue of the son happened to be twins, who resembled each other so closely, that it was difficult to distinguish them; and, either from accident or design, the requisite means were not used for determining which of the twins was the first born, and consequently which of them was entitled to the entailed estate. The will became a subject of litigation; the legislature of the commonwealth interposed, with what we should now call a strong hand, and passed a law that the two children should hold the estate in common, until the question should be judicially decided. That law was disregarded by the parties, as being an interference with private rights beyond the power of the legislature; the brothers occupied the two ends of their father's mansion house; and, as the tradition is, passed in and out by the same door for a long time without speaking to each other. The affair continued to be a subject of litigation, with some intervals of suspense, in various forms, from one generation to another; and it was not till the year 1829, that the rights of the parties were settled; after a lapse of about seventy years. The estate was, by that decision, with

consent of parties, divided equally between the descendants of the twin brothers.

"Persons who are not lawyers may be ready to ask, why the courts could not have made a similar decision at first. For this plain reason; that the laws did not permit it. The eldest son, at that period, had his legal rights to the estate; and if he did not choose to yield them up in any degree, the courts could not compel him to do it. If they could have exercised such an arbitrary power in that instance, you at once perceive that the same kind of authority might be exercised in other cases.

"The case I have just stated was one where the uncertainty arose from not being able to decide which of two persons was born first. Equally perplexing cases occur where it is impracticable to determine how an estate shall descend, because it is not possible to know which of two persons died first; as where a husband and wife were both murdered at the same time, or where a father and his son have been both killed in the same battle, or have perished by shipwreck in the same vessel. The case of General Stanwix and his daughter, which is familiar to professional men, is a remarkable one. That officer and his daughter, an only child, had set sail from Ireland in the same vessel; which was cast away, and not a single person on board was saved. There was not the least evidence, whether the general or his daughter was the longest liver. The legal personal representative of the father was not the same individual as the personal representative of the daughter, in case she survived him. Their respective representatives made their claims and were heard in chancery; and the court, finding the arguments on each side equally ingenious and equally inconclusive, recommended a compromise, which was agreed to.

"I may add, that the celebrated French Code, known by the name of the Napoleon Code, makes particular provision for such cases; and declares, that the one death or the other shall be presumed to have been prior or subsequent, according to the circumstances of inequality of ages and difference of sex, in addition to any other known facts respecting each of them.

"It may, at first view, appear somewhat paradoxical, and yet it is incontestible, that the very necessity of extreme precision in the law is one source of what is popularly called its uncertainty. It happens in this manner: the courts of justice are frequently called upon to settle conflicting claims by applying distinctions, which are more subtle and delicate than usually occur in the practical concerns of social life. Cases run so near to each other, as to be scarcely more distinguishable than the boundaries of adjoining colours in the rainbow. In illustration of this remark I will state one or two cases which have occurred within my own experience.

"The first was the case of an attachment of real estate made by two different creditors, without each other's knowledge, by two different deputies of the sheriff. In order to be fully sensible of the difficulty of the case I am about to state, you will keep in mind, what you probably have all known, that no writ or legal process, except in cases of crimes, can be executed on Sunday; of course no attachment of real estate can be made till after midnight of that day. You ought to be apprised, also, that to

make a valid attachment of real estate, by our laws, it is not necessary that the sheriff should go upon the land, but it is sufficient for him to certify on the back of the writ, as soon as he receives it, that at such an hour he made an attachment of the debtor's land, wherever it may happen to be. Now you will readily conceive, that in the event of an expected failure, there will be many writs prepared in due season and awaiting the important moment of the midnight of Sunday. With these explanations the case alluded to will be intelligible without any knowledge of law.

"One attachment was certified by the officer in words to this effect: 'At one minute after twelve o'clock I attached a piece of land belonging to the debtor,' &c.; and the other officer made his attachment of the same land in this form: '*Immediately after midnight* I attached,' &c. In the argument it was contended, on the one side, that a *minute* was the smallest division of time known in the law and in the common business of life, and was therefore the smallest period of time after midnight, in which any act of that kind could be supposed to have been done. On the other side, it was maintained, that the words *immediately* after midnight implied a point of time earlier than *one minute* after that hour; as, by the very definition of the words *immediately after*, there could not be an intervening period, even of the sixtieth part of a minute between the hour of twelve o'clock and the moment of making the attachment. Now, considering this case theoretically, the attachment which was made immediately after midnight might be entitled to the priority. But the court, treating the question practically, came to the conclusion that both the attaching officers must have intended the same moment of time, though they had made use of different words in expressing it; that they both intended and made their attachments the moment that Sunday was ended; and it was accordingly adjudged, that the two attachments must be considered to have been simultaneous, and that the two creditors should hold the estate in equal moieties between them. Now the creditor, who expected to have had the priority and to have held the whole lot of land, doubtless felt that he had good right to complain of the uncertainty of the law.

"The difficulty in this and all other cases of nicety, where parties will not give their consent to an adjustment, arises from the absolute necessity of deciding either one way or the other; the courts not being permitted, as arbitrators chosen by the parties might, to apportion their claims according to rules of equity without regard to strict rights in law.

"Another instance, within my own experience, also, was a case in which the principal question was, whether the Bermuda Islands were in the West Indies. The question arose upon a policy of insurance, in which a vessel was insured to the West Indies, generally; and the owner, who considered the Bermudas to be included in the term West Indies, sent his vessel thither, and she was lost. On the trial, witnesses were produced, and books of geography, that countenanced opposite opinions on this point; and cases of insurances made in this city were referred to, in which the insurers and insured had held the Bermudas to be included in the term West Indies; and it was argued in support of this opinion, that the whole American continent and its islands were originally called the West Indies, and

that a part of the main land, even at this day, was in popular language sometimes spoken of by the same name. But the jury, under the direction of the judge, were of opinion, that the weight of evidence of shipmasters and merchants was against including the Bermudas in the general term West Indies; the opinion of the judge being, that whatever might be the classification made by geographical writers for their purposes, yet this and all other names and terms in commerce must be construed according to the usage and understanding of commercial men, where that usage can be ascertained. This decision, as you may suppose, did not tend to make the losing party think at all more favourably of the certainty of the law; yet, you perceive at once, that the law itself was not in fault; but the uncertainty lay entirely with the nautical and commercial gentlemen who were witnesses in the case, and who had different opinions upon the point of usage.

"It is a curious fact, that while we were here trying this question respecting the West Indies, a question of the same kind was trying in England in regard to the term East Indies—namely, whether the Isle of France was included in the terms 'India and the East India Islands.' And before I inform you of the decision, let me ask any merchant or other practical man here present, if he feels perfectly clear in his mind how it ought to be determined? There was, in fact, so much doubt raised in the case upon the evidence adduced, that on one trial it was decided that the Isle of France was comprehended under the name East Indies, and in another, that it was not (1 Bing. Rep. 445; Ryan & Moody's Rep. 75).

"Strange as this result may at first view appear, and much as it may seem to countenance the popular opinion I am attempting to combat, yet to persons who are conversant with the ordinary concerns of business, it will occasion no surprise. It is obvious, in the first place, that here was no uncertainty in the law; the dispute was upon a mere matter of fact, which depended entirely upon the evidence of mercantile and other witnesses acquainted with the usages of trade in regard to the point in question. If, then, there was no settled usage, the witnesses, and consequently the court and jury, must feel doubts.

"Cases of insurance frequently present instances of great nicety and proportionate difficulty; but the difficulty generally arises out of the facts, or evidence, and not from the law. Before an audience like the present, in a commercial city, I shall be pardoned for adverting to a few of them.

"What, let me ask my mercantile and nautical friends present, constitutes a stranding of a vessel? How must a vessel be situated, and for how long a time, in order to be considered as stranded? In one adjudged case, the jury were of opinion, that stranding meant, where the vessel took the ground and bilged, so as to be incapable of proceeding on her voyage; and in another, where a vessel ran upon piles, and rested till they were cut away; in another, where she was driven aground in the river Thames, and remained aground an hour, it was held not to be a stranding; yet, again, in another case, where a vessel fastened by a hawser to the pier of the dock, took the ground, it was held to be a stranding; but where a vessel touched upon a rock and rested one minute and a half, it was decided not to be a stranding.

"Again; the word corn, in an English policy of insurance, includes malt, peas, and beans, but not rice. In New York, the exception of all partial losses on roots does not discharge the insurers from a partial loss on sarsaparilla, because, though sarsaparilla is a root, yet not being perishable, it is not included in the memorandum.

"The term shipwreck has occasioned much embarrassment, from the extreme difficulty of defining the degree and circumstances of the disaster which shall constitute a loss of that kind. Nor is it less difficult to determine at what point the seaworthiness of a vessel ends and unseaworthiness begins; besides which, the standard of seaworthiness has been gradually raised, within the last twenty years, in consequence of a more perfect knowledge of ship-building, greater experience in maritime risks, and an increased skill in navigation; and there is also a difference of opinion, among practical men, as to what equipments are or are not necessary. From these causes also, different nations have at this time different standards of seaworthiness.

"After the examples I have given of the alleged uncertainties of the law, which I have endeavoured to show do not exist to a greater extent than is to be found in other sciences, you may perhaps ask, why this stigma has been fastened so conspicuously on the law alone?

"Whether any distinct and satisfactory answer has been expressly given to this question I cannot affirm. But, in reflecting upon the subject, I have come to the conclusion, that, although it may have been partly occasioned by ancient prejudices against the professors of the law, yet it must, after all, in the present enlightened age, be principally owing to this circumstance—that in the law alone there is an indispensable necessity of making a decision upon disputed points, which must always affect two contending parties, one of whom must gain and the other must lose his cause, as in every controversy between private individuals, or between the Government and the citizen; and the losing party will naturally feel that he has a right to complain of the law. Let me now remind you, how very different a state of things exists in other professions. In medicine, when a patient asks the opinion of his physician upon his case, if the latter should feel ten times the uncertainty that a lawyer would in advising a client, still it is of no importance to any other person than the patient whether the physician is right or wrong in his decision; there are no conflicting claims of another party to be affected by the advice given, and nobody remains to complain, if the advice should prove fatal. So in theology, the advice or the decision of the divine reaches no farther in its effects than the individual who is the immediate subject of it.

"In addition to all other obstacles to the attainment of certain and steady decisions which depend on the opinions of jurors, as well as upon the rules of law, and as some apology for what are often considered to be the mistakes or misjudgments of juries, it ought always to be remembered, that we require of them what we exact in no other case—I mean a perfect unanimity in their decisions. Without here examining into the expediency or in expediency of this strictness, I may ask, whether, under the restraint of such a rule, we should wonder that juries, with honest differences of

opinion, and from an anxious wish to come to an agreement, should by a mutual compromise of their individual sentiments often appear to do injustice, and sometimes really do it, by awarding to a party a smaller or greater compensation for an injury than would have been by the majority, even of the same jury. Can we wonder also, that juries should for the same cause occasionally be unable to agree at all? How many bodies of twelve men, in other professions, whether physic, divinity, commerce, the mechanic arts, in short, throughout the whole community, would be more steady and certain in their decisions and give more satisfaction to the public, if they were also required to be unanimous in their opinions?

"In justice to juries, too, we ought to recollect how many cases they do in fact decide correctly and satisfactorily; these, however, we are apt to lose sight of, and only remember those few instances, comparatively speaking, where they either decide incorrectly or cannot decide at all, from the real difficulty of the questions. In a case of this latter description I recollect being once very strongly impressed, as well as amused, with the earnestness of an honest and warm-hearted foreman of a jury, to whom an intricate cause had been committed, and in which they were unable to come to a decision. When they informed the court that they could not agree, and they were discharged from any further consideration of the case, the foreman exclaimed to the counsel in the cause, in a tone of vexation and remonstrance, 'what do you give us such puzzling cases for; why don't you let us have some easy ones, that we can agree in?'

"Upon a candid and dispassionate review of this subject, then, I flatter myself, that if any individual who hears me may have heretofore entertained the common prejudices respecting the uncertainty of the law, though he may not be now entirely satisfied that those prejudices are wholly unfounded, he will at least think the reproach less justly deserved by our science than he may have once supposed. He will, I am sure, be convinced that the doubtful cases which occur in courts are more owing to the frauds, the interests, or the passions of the parties litigating, than to any gross defects in the laws themselves. Blackstone justly observes, 'The law rarely hesitates in declaring its own meaning; but the judges are frequently puzzled to find out the meaning of others' (1 Comm. 329). He adds, that in his time, that twenty days in the year were sufficient in Westminster Hall to settle every special point of law that arose throughout the nation; but that two months were annually spent in deciding the truth of facts before six different tribunals in the several circuits of England, exclusive of London and Middlesex."

RECENT STATUTES.

The last session of Parliament, like its predecessor, did not furnish many important statutes, but still there are some deserving notice, of which, until we can notice them more completely, we present the following:—

THE SALE OF GAS ACT.

After the passing of this act, the only legal standard or limit of measure for the sale of gas by meter shall be the cubic foot, containing 62,321 lbs. avoirdupois weight of distilled or rain water, weighed in air at the temperature of sixty-two degrees of Fahrenheit's thermometer, the barometer being at thirty inches—except as relates to contracts made before the passing of this act, by which a difference of unit of measure is adopted, which contracts may not be renewed. The models of measures are to be made and verified under the direction of the Treasury, are afterwards to be deposited in the office of the Comptroller-General of the Exchequer at Westminster; and copies of the same are to be sent to the Lord Mayor of London, to the chief magistrates of Edinburgh and Dublin, and to the chief magistrates of such other cities and boroughs, and to such other places and persons in her Majesty's dominions, as the Lord High Treasurer of her Majesty's Treasury may from time to time direct. The number and sizes of the said models to be decided within nine months of the passing of this act in England, by order of General or Quarter sessions, excepting in the case of boroughs, where the order shall be made by the town council, and in Ireland by the town council or town commissioners, of every borough or town (such town council or commissioners not being manufacturers or sellers of gas), and in Scotland by meetings of justices. The same authorities are to have the appointment of inspectors of meters, who are to be paid out of the county rates, in boroughs, out of any funds applicable for lighting purposes; and, if no such fund, then out of the borough fund (in the city of London, out of the Consolidated Rate). Similar arrangements are made in the case of Ireland and Scotland. Inspectors are required to furnish security, are subject to a fine not exceeding £5 for each breach of duty, and are prohibited from repairing, making, and selling meters of gas, and must hold no appointment of any kind in any gas company. Justices of the peace and the town council in boroughs to determine and appoint on what days, at what hours, and at what places, the inspectors shall attend with their measuring apparatus, within their respective jurisdictions—a trifling fee to be charged for testing, &c., each meter. For meters of a small size it will be sixpence. Such fees to be paid over to the treasurer of the county, or to such other person who shall be duly authorised by those by whom he may have been appointed. No meter shall be stamped which shall be found to register, or be capable—by the increase or decrease of water, or by any other contrivance practically prevented in good meters—to register quantities varying from the true standard measure of gas more than two per cent. in favour of the seller, and three per cent. in favour of the consumer. The only exception to this which is permitted is where the two contracting parties enter into a written agreement to adopt a different kind of meter. At the request and expense of any buyer or seller of gas, it shall be lawful for any inspector, authorised in writing under the hand of any justice of the peace of England or Ireland, or of any sheriff, justice, or magistrate in Scotland, at all

seasonable times to enter any building yard or any other place where any meter, whether stamped or unstamped, is fixed, and to examine and test, and, if necessary, to remove the same. Before this can be done, however, it is necessary that the other party to the contract should have previously received twenty-four hours' notice in writing of such intention, and, in case of a disputed decision of an inspector, the point to be referred to two inspectors of adjoining districts. Persons aggrieved may appeal to quarter sessions. After the expiration of twelve months from the passing of this act, no gas meter shall be fixed for use but what has been duly tested and stamped outside, in legible letters or figures, by an inspector of meters under the provisions of this act; and every purchaser and seller of gas may at any time, after the expiration of the said twelve months, require any unstamped meter by which his gas is measured to be examined and tested, and if found correct, stamped; or he may, at his own expense, substitute a stamped meter in place of any such unstamped meter.

THE NEW INCOME TAX.

By the New Income Tax Act, the additional duty of 4d. in the pound is payable on all incomes amounting to and above £150 a year. It has been supposed that the duty of 1½d. would be imposed on incomes not exceeding £150, but the words are very clear on the subject. The additional 4d. in the pound on property, profits, and gain, and on lands, tenements, hereditaments, and heritages in England 2d., and in Scotland and Ireland 1½d., "shall be collected and paid with, and over and above, the first moiety of the date assessed or charged." The additional rates of duty are to be charged on half-yearly and quarterly assessments. Deductions are to be made on payment of interest, rent, &c.; and if such payments be made without the deduction, they may be recovered and received from the person to whom the same may be made. The allowance of duty to persons in respect of deferred annuities is to be extended to the like annuities contracted for with the National Debt Commissioners. The act reduces the period of credit allowed to malsters from eighteen to twelve weeks, and a discount of six weeks is to be allowed to them in consequence of the reduction of credit on all malt made on or after the 1st October next, and before the 1st April, 1860. The additional duties can be collected in the half-year ending next October on incomes.

COMMITMENTS BY COUNTY COURTS.

This act limits the power of imprisonment by county courts. It enacts, "That if a party summoned under and by virtue of the act of the 9 & 10 V. c. 95, s. 98, shall not attend, as required by such summons, or allege a sufficient excuse for not attending, it shall not be lawful for the judge before whom such party shall have been so summoned to order that such party shall be committed to prison, unless it shall appear to the satisfaction of such judge that such party, if a defendant, in incurring the debt or liability which is the subject of the action in which judgment has been

obtained, has obtained credit from the plaintiff under false pretences, or by means of fraud, or breach of trust, or has wilfully contracted such debt or liability without having had, at the time, a reasonable expectation of being able to pay or discharge the same; or shall have made, or caused to be made, any gift, delivery, or transfer of any property; or shall have charged, removed, or concealed the same with intent to defraud his creditors, or any of them; or has then, or has had since the judgment obtained against him, sufficient means and ability to pay the debt, or damages, or costs so recovered against him, either altogether or by any instalment or instalments which the court in which judgment was obtained shall have ordered, and shall have refused or neglected to pay the same." The act is now in operation.

THE NEW STAMP ACT.

The New Stamp Act makes some alterations in the probate duty, and in the law relating to hawkers and pedlars. There is now a graduated scale on probate where the property amounts to one million and upwards instead of a cessation of duty, as hitherto, beyond that amount. Where the value amounts to one million or upwards, the duty will be as follows:—For every £100,000 of the whole part, and any fractional part of £100,000, where the deceased has left any will or testamentary disposition of his personal property, the stamp duty of £1,500; and where the deceased has not left any such will or testamentary disposition, the stamp duty of £2,250. The stamp duty on licenses to exercise the faculty of physic is repealed. Nothing in any former act is to hinder the maker of goods, his children, and servants, from carrying about and selling such goods. By the act, justices are empowered, on conviction of a hawker in a pecuniary penalty, to mitigate the penalty to a sum not less than one-fourth part over and above the necessary costs of the proceedings.

SETTLEMENT ON WARD OF COURT.

The following communications are referred to in Notices to Correspondents of last month:—

GENTLEMEN.—The answer given by you to Question 15, Equity, Trinity Term, in the last number of the *LAW CHRONICLE*, appears to me to be inaccurate in this respect: You say that one of the proper trusts in a settlement on the marriage of a ward of court, into which the husband brings little or no property, would be a life estate to the husband in the property after the death of the wife. I happen to have been concerned in a case in which the court refused the husband a life estate after his wife's death, and I believe such to be the general rule. Should you, on further consideration, agree with me, probably you will refer to it, in your next number, and oblige—An old Subscriber, W. S.

GENTLEMEN.—In the case referred to in my last communication to you, the marriage took place with the sanction of the court. The intended husband and his solicitor appeared before the Vice-Chancellor at chambers, and urged upon his Honour to allow him a life interest after the death of his wife; but he refused, on the ground that he brought nothing into settlement. Whether the fact of its being known that the intended husband had money, and refused to bring it into settlement, would alter the case, I would solicit your consideration.—Faithfully Yours, W. S.

Summary of Decisions.

CONVEYANCING AND EQUITY.

ADMINISTRATION OF ESTATE.—*Injunction—Judgment by creditor before probate—Sale before decree—Bills of Exchange Act.*—A testator died indebted on bills of exchange. The creditor, before the executors proved the will, issued a writ under the Bills of Exchange Act (18 & 19 V. c. 67), and the executors not appearing, the creditors signed judgment and levied on the goods of the testator in the hands of the executors, and the sheriff sold. Specialty creditors of the testator afterwards took out an administration summons, and obtained a decree at the Rolls, and moved to restrain the sheriff from parting with the money arising from the sale, and that the money should be paid into court; and the same was ordered by the Master of the Rolls: Held upon appeal (reversing his Honour's order), that as the money was in the hands of the sheriff at the suit of the creditors on the bills of exchange before the decree in the administration suit, the motion must be refused with costs. *Mauvage v. Skeggs*, 28 Law Journ. Ch. 433.

CHARITABLE TRUSTS ACT.—*Pending matter—Scheme—Appointment of new trustees.*—Where a petition is presented in a matter, and an order is made upon it, which is in effect a final order, the matter is no longer actually pending under the 17th section of the 16 & 17 Vic. c. 107. Where an order, which is in effect a final order, has been made upon information or petition, all subsequent applications to the court, involving any question not included in such order, require the certificate of the Charity Commissioners. *In re Jarvis's Charity*, 7 Week. Rep. 606.

CHARITY.—*Statute of Limitations—Lease.*—The master of a charity, having made a lease of charity lands to a trustee for himself, and died in 1823: Held, that the Statute of Limitations ran against the charity from that time. *Attorney-General v. Payne*, 7 Week. Rep. 604.

EQUITABLE PLEA AT LAW.—*Neglect to plead—Jurisdiction of equity.*—The 83rd section of the C. L. P. Act, giving a right to plead an equitable defence, is only permissive and not compulsory, and a defendant at law who has not exercised his option of putting in an equitable plea, may come for an injunction to restrain the action, as he might have done before that act. *Gompertz v. Pooley*, 28 Law Journ. Ch. 485.

FEME COVERT.—*Gift to separate use of a wife*—*Employment of the money by the husband with the consent of the wife*—*Right of a widow against the deceased husband's assets.*—The principle which is involved in the following case is clearly stated in the case of *Rich v. Cockell* (9 Ves. 369), which was decided by Lord Eldon. If a sum of money is given to the separate use of a wife as a capital sum without the interposition of trustees, the payment of that sum to the husband makes him a trustee, and he is bound to hold it for the separate use of his wife. In *Rich v. Cockell*, Lord Eldon decided, that the mere transfer of the fund to the husband did not destroy the separate use of the wife; or in other words, that the husband is a guardian of the fund, and a trustee for the separate use of the wife. But then Lord Eldon said what was equally obvious—namely, that upon sufficient evidence of any intention on the part of the wife that the husband should employ the money for his own use, or for the use of any other person, or for the use of himself and his wife, towards the family expenditure in some way she might think proper, the wife might, by her assent to the money being so applied, put an end to her trust for her separate use; and the only question is, as to the evidence of assent which is necessary in order to put an end to the trust. The plaintiff during her husband's lifetime was entitled under a will to a legacy for her separate use. The executors paid the money, and the wife executed to them a release by deed, to which the husband was a party. The money came into the husband's hands, but in what manner or under what circumstances there was no evidence to show, save that the plaintiff did not deny that it came to him, and was paid by him to his bankers, and dealt with by him with her knowledge and consent. No communication took place between the husband and wife afterwards on the subject after the payment. The money was employed by the husband partly in his business, and partly in the family expenditure. The husband died intestate, and the widow, the plaintiff, claimed the sum out of the husband's assets on the ground that he was a trustee of the same for her separate use: Held, that the employment of the money by the husband in the manner above-mentioned, with the assent of the wife, rendered it impossible for the widow to claim the money out of the husband's assets. *Gardener v. Gardener*, 33 Law Tim. Rep. 313.

FEME COVERT.—*Wife's equity to a settlement*—*Domicil*—*Ward.*—The payment into court under the Trustee Relief Act, to the account of an infant, a female, makes her a ward of court. A ward of court, although married and domiciled in Scotland (where the doctrine of a wife's equity to a settlement does not exist), may, where funds belonging to her are in this court, oblige her husband to make a proper provision for her before such funds are paid out. *Re Tweedale's Trust*, 33 Law Tim. Rep. 283.

FOREIGN LAW.—*Scotch law*—*Necessary parties*—*Possibility of issue.*—Where the decision of the question in a cause depends upon foreign law, that is a question of fact, and must be determined by the preponderance of opinion of juriconsults of the country the law of which is involved in the question, the court will not take upon itself to determine the effect of

decisions upon the law of a foreign country. Where a claim is made to property, the court requires all persons, or classes of persons, to be before it, interested in opposing such claim, and will not part with the property unless the claimant, if successful, would be entitled to immediate possession, and the rights of parties, or classes of persons, interested in resisting the claim are protected. Where the claim to property depends upon a female having a child, who is in her 52nd year, who has been married for thirty years, the court cannot assume that all possibility of her having a child is at an end. *Lord v. Cohun*, 7 Week. Rep. 661.

INFANCY.—*Misrepresentation as to age—Marriage settlement.*—By a marriage settlement, the husband covenanted to settle £1,000 on his wife and children. At the time of the marriage the husband was an infant of eighteen years of age, but he represented to his wife, or to her solicitor, that he was of age. The wife carried on the business of a pawnbroker before marriage, and the husband, upon his marriage, took possession of the stock in trade, which was worth several hundred pounds, and carried on the business, but did not settle the £1,000 according to his covenant. After the death of the wife the trustee filed a bill to enforce the covenant. The court being of opinion that the result of the evidence was, that the wife was not deceived as to the age of her husband, but knew herself that he was an infant, dismissed the bill. The protection which the law throws around an infant is a legal privilege, and ought not to be broken in upon on slight grounds. If a person pleads that he was led into a contract with an infant by misrepresentations on the part of the infant as to his age, he must show that he was actually deceived by such misrepresentations. *Nelson v. Stocker*, 7 Week. Rep. 603.

INFANTS, CUSTODY OF.—*Paternal rights—Jurisdiction of the court.* The Court of Chancery cannot decide upon the custody of infants simply with reference to what is most for their benefit, and cannot interfere with the rights of a father unless he so conducts himself as to render it essential to the safety and welfare of the children in some serious and important respect, either physically, intellectually, or morally, that they should be removed from his custody. Upon petition by a wife for the custody of her children, after having obtained a decree of judicial separation against her husband in the Matrimonial Court on the ground of cruelty, the court held, upon the affidavits and circumstances brought forward, that there were no grounds for attributing such undue harshness, severity, or cruelty to the husband with regard to his children, as to render himself unfit to have the management of them, and dismissed the petition. *In re Curtis*, 28 Law Journ. Ch. 458.

MORTMAIN.—*Bequest of railway shares to a charity.*—A bequest of money arising from dividends on shares held by a testator in a railway company does not come within the operation of the Mortmain Act, though the railway in question was leased to another company, who had an option of purchase, in the event of which the purchase money would have been divisible among the shareholders. *Linley v. Tayler*, 7 Week. Rep. 639.

PARTNERSHIP.—*Lunatic—Dissolution by notice.*—When parties enter into a partnership at will, notice to one by the others that they wish to dissolve the partnership must be considered as an overture for an effectual dissolution. For this purpose a notice to a person of unsound mind not found a lunatic by inquisition: Held, good, and dissolution decreed from the date of the notice. *Mellish v. Keen*, 7 Week. Rep. 629.

PARTNERSHIP.—*Goodwill—Banking business—Executor's power to bind each other.*—The goodwill of a banking business belongs, in the absence of special agreement, to a surviving partner and the executors of a deceased partner, in proportion to the shares of the partners. But in apportioning the proceeds of a sale of the business, regard must be had to the circumstances—as, for instance, that the premises belong to the surviving partner, and that the right of issuing notes survives. One or two executors may settle an account so as to bind their co-executors, in the absence of fraud, or possibly of very gross error. *Smith v. Everett*, 7 Week. Rep. 605.

PETITION.—*Compromise—Setting aside deeds.*—Deeds duly prepared and executed, with a view to put an end to litigation, will not be set aside without the strongest evidence of mistake, duress, or fraud. *Hetnarain Sing v. Modnahain Sing*, 7 Week. Rep. 589.

PRINCIPAL AND SURETY.—*Fraud—Mutual mistake—Release of surety by mistake.*—It is a well-acknowledged principle that no persons shall be allowed to avail himself of the fraud of another, unless there is some consideration moving from the person seeking relief. B. and T. being indebted as principal and surety to S., upon promissory notes, false representations were made by B., upon which T. pressed S. to accept, and S. did accept as a security for the debt, the transfer of a mortgage, and thereupon erased T.'s name from the notes. The mortgage proved invalid and worthless: Held, that although T. was innocent of the fraud, yet he must not be allowed to gain by it, and that he therefore was still liable as surety, notwithstanding the erasure of his name. *Scholefield v. Temple*, 7 Week. Rep. 635.

PUBLIC COMPANY.—*Winding-up—Banking company—Contributory—Misrepresentation.*—A joint-stock company or other association legal in inception, but which may have been fraudulently conducted and mismanaged, may be wound up under the act at the instance of shareholders who may not have participated in such fraudulent mismanagement, and thereby obtain contribution towards their losses. Where, however, the association is illegal in its inception there could be no right to contribution. *Re London v. Eastern Banking Company, Longworth's Case*, 38 Law Tim. Rep. 283.

PUBLIC COMPANY.—*Winding-up Acts—Loss of three-quarters of capital—Joint Stock Companies Act, 1856, ss. 67 & 72.*—Where a petition is presented under the 67th section of the Joint Stock Companies Act, 1856 (19 & 20 V. c. 47), for winding up a company in bankruptcy, although it may be shown that the company has lost three-quarters of its capital, yet it is entirely within the discretion of the court, under the 72nd section, whether to order the winding-up or to dismiss the petition. Where there-

fore, a petition was presented by a contributory, and the court was of opinion that the petitioner was not acting *bonâ fide*, and was a tool in the hands of a rival company, the petition was dismissed with costs. Although the disapprobation of the large majority of the shareholders is not conclusive on such a petition, yet it will weigh with the court in forming its decision. *Ex parte Hawkins, Re The Metropolitan Saloon Omnibus Company (Limited)*, 7 Week. Rep. 636.

SETTLEMENT.—*Gift over on alienation or bankruptcy.*—By the settlement on A.'s marriage, he, in consideration of £1,000 paid to him and a future property of the wife assigned to him, settled his real property on himself till mortgage, alienation, or bankruptcy, and then upon trust as to £300 a year for the wife's separate use. A. first mortgaged his interest and afterwards became bankrupt: Held, that the wife was entitled to the £300 a year from the date of the mortgage. *Brooke v. Pearson*, 7 Week. Rep. 638.

SOLICITOR.—*Negligence—Summary jurisdiction—Receiver—Solicitor for the plaintiff acting for the receiver, and receiving moneys.*—Where a firm of solicitors acts for a plaintiff in a suit, and also for a receiver, remittances made by the receiver to them are received in the character of solicitors to the receiver, and they are not accountable for them to the plaintiff. Whether there is any jurisdiction in the Court of Chancery to make a solicitor answerable to his client for negligence where there has been no fraud or misconduct: *Quære*, if there be such jurisdiction, it is a matter of discretion whether the court should exercise it, and in such case the client must show a clear case of damage, and that the Court of Chancery can alone give complete relief. *Dixon v. Wilkinson*, 7 Week. Rep. 624.

SOLICITOR AND CLIENT.—*Bill by client, an illiterate person, against his solicitor—Taxation—Mortgage debt—Right to inquiry—Evidence.*—The plaintiff was an illiterate person, and the defendant acted as his solicitor. After some years, the plaintiff called upon the defendant to furnish a bill of costs, it being the usual practice of the defendant to charge his clients with a gross sum instead of a bill of costs. An order to deliver a bill of costs was obtained, and the defendant furnished a cash account of receipts and payments, consisting of a few items, one of which was his bill of costs, and showing a balance of £83, due to him from the plaintiff. One of the items for which the defendant had taken credit was a sum of £300 and interest. The taxation was being proceeded with, and the master having allowed most of the items in the bill of costs, the plaintiff began to dispute the items in the cash account, but did not at first impugn £300. Some months afterwards he disputed the item of £300 and interest, which was shown by the defendant to have been secured by a mortgage of the plaintiff to the defendant. This mortgage was afterwards transferred, and the debt discharged. The master denied the right of the plaintiff to dispute the item, whereupon the plaintiff denied that he had ever executed such a deed. The plaintiff afterwards filed the present bill, alleging that he had never received the consideration money for the mortgage deed (which was alleged

by the defendant to have been made up of various payments made on the plaintiff's behalf by the defendant and a sum of costs), and prayed for an account of the receipts and payments of the defendant on behalf of the plaintiff, and that, if necessary, the mortgage deed might be declared not binding on the plaintiff: Held, that as the plaintiff had already had the investigation to which he was entitled in equity, and the result of that investigation had been not to disturb a single item in the account, no further relief could be given to him, and bill dismissed with costs. The defendant had taken, and still held, an acceptance and two I. O. U.'s of the plaintiff as acknowledgments of sums due to him, which were afterwards included in the mortgage debt. Held, in the absence of anything to throw discredit on the holder, that these acknowledgments must be taken as *prima facie* evidence of the advances. There is nothing in *Lawless v. Mansfield* (1 Dr. & W.) to show that any other rules than those of ordinary evidence are applicable to cases of solicitor and client. *Judd v. Ollard*, 33 Law Tim. Rep. 268.

VOLUNTARY ASSIGNMENT.—Policy.—Where an instrument purporting to be a gift is incomplete, courts of equity will not give its assistance to volunteers to supply the defect. A voluntary instrument may be effectual either as a declaration of trust or as a complete assignment. A voluntary assignment of a policy on the assignor's life, containing an irrevocable power of attorney, held good against the executors of the assignor, it being a complete instrument. *Pearson v. Amicable Society*, 7 Week. Rep. 629.

VOLUNTARY SETTLEMENT.—Creditor.—A voluntary settlement made without valuable consideration, the settlor being at the time in embarrassed circumstances, is not void under the 13 Eliz. c. 5, unless it is the spontaneous act of the settlor, and there is proved to be an intent on his part to delay, hinder, or defraud creditors, the onus of proving such intent lying on the party alleging it. To render a deed void as against creditors, it is not sufficient that it is merely voluntary, but it must be proved that the party making it intended to delay, hinder, or defraud his creditors. On the question of a voluntary deed being void under the statute of Elizabeth, all the surrounding circumstances must be looked at, and each particular case must depend upon these circumstances. *Thompson v. Webster*, 7 Week. Rep. 596.

VOLUNTARY SETTLEMENT.—Void as against creditors—Right of a creditor subsequent to the bankruptcy to sue.—It is well settled, that in order to set aside a settlement as a fraud against creditors, the person who complains must be a person who was a creditor at the time, and whose interests and rights were interrupted by the effect of the settlement, but it appears from the following case, that if the party have been bankrupt or insolvent, and his assignees are before the court, a decree will be made. In the year 1840 B. was made a bankrupt, and assignees were appointed, but he did not obtain his certificate. In 1849 he became entitled to certain leasehold property under a grant from the Crown dated in that year. In 1850 he

settled this property upon certain voluntary trusts in favour of his two unmarried daughters and their respective children. Afterwards the daughters both married, and one of them had children. The plaintiff, who was a creditor of B. since the date of the bankruptcy, filed a bill on behalf of himself and all the other subsequent creditors, for the purpose of setting aside the settlement. The daughters, and their husbands, and the children, contended, that the marriage imported a valuable consideration into the settlement, which was originally only voluntary. They also contended that the plaintiff had no right to sue: Held, that as the husbands had no present interest, they could not be treated as purchasers for valuable consideration, whilst their wives and children, who were volunteers at first, were volunteers still: Held, also, that as bankruptcy had intervened, and the assignees were before the court, the plaintiff, on the authority of *Tucker v. Hernaman* (4 DeG. M. & G. 395), had a right to sue, and relief granted as prayed. *Collins v. Burton*, 33 Law Tim. Rep. 313.

WILL.—Accumulation—*Thellusson Act*—39 & 40 Geo. c. 98.—It is provided by sec. 2 of the *Thellusson Act*, 39 & 40 Geo. c. 98, "that nothing in this act contained shall extend to any provision for payment of debts of any grantor, settlor, devisor, or other person or persons, or to any provision for raising portions for any child or children of any grantor, settlor, or devisor, or any child or children of any person taking any interest under such conveyance, settlement, or devise. It appeared in the following case, that the testator devised lands upon trust for his son A., during the joint lives of A. and B., and after the death of either of them (A. and B.) which should first happen, upon trust to receive and invest the rents in stock, and to accumulate the dividends, &c., by way of compound interest, until the trustees should have laid out £3,000 in the purchase of stock, and, subject to such investment, upon trust for A., with remainders to A.'s first and other sons in tail, with remainders over to testator's other sons, &c. As to the accumulations, the trustees were to stand possessed thereof upon trust for the benefit of the child or children of A., and in default of such issue, upon trust as A. should, by will, appoint, and in default of appointment for the next of kin of A. living at his death, according to the Statute of Distributions. The testator died in August, 1822. A. died without issue in 1839, in the lifetime of B., having bequeathed to C. the £3,000 directed to be accumulated: Held, that the trust for accumulation was not a provision for a portion within sec. 2 of the *Thellusson Act*, and that the accumulation was void, except for the period of twenty-one years from the testator's death: Held, also, that C. was entitled to the accumulations made between A.'s death and the expiration of twenty-one years from testator's death, and that subject to such right of C., the remaining accumulations belonged from time to time to the persons entitled to the rents and profits under the limitations contained in the will. *Re Clulow's Trusts*, 7 Week. Rep. 594.

WILL.—Construction—*Copyhold—Leasehold*.—Devise of a house as leasehold, which afterwards turned out to be partly on leasehold and partly on copyhold land, held to be a valid gift of the entire property. *Bush v. Culloway*, 7 Week. Rep. 638).

EQUITY PRACTICE.

CHARGING ORDER.—1 & 2 Vic. c. 110—*Costs.*—Charging order for costs, which had been directed to be paid, made upon shares belonging to the party by whom the costs were to be paid. The form of the *ex parte* order was to show cause on the first seal after two clear days from the service of the order, with an interim injunction to restrain transfer. *Blozain v. Hopkinson*, 7 Week. Rep. 606.

COSTS.—*Trust fund severed—Mortgagor and mortgagee.*—A trust fund, when severed, must bear the costs of its own investments. In a case where a mortgagee has been obliged to incur costs by defending his title to the mortgage, and the hereditaments thereby mortgaged, such costs, if they have been incurred for the general benefit of the parties entitled to the estate mortgaged, will be borne by the general estate. Should, however, the costs be incurred by defending his title to the mortgage simply, he would not be entitled to such costs as against the general estate. *Parker v. Watkins*, 33 Law Tim. Rep. 270.

DISMISSAL OF BILL.—*Plaintiff becoming insolvent—No costs—Form of order.*—A plaintiff having become insolvent, a vesting order was made by the Insolvent Court, and no step having been taken in the suit subsequently to the vesting order, the defendant moved to dismiss the bill with costs; but although no notice of the insolvency was given to the defendant for five months, during which the defendant was proceeding with his defence to the suit, on the provisional assignee expressing his desire to prosecute the suit, their Lordships made an order that he should bring himself before the court within a time limited in the order, or that the bill should be dismissed, but without costs. *Meiklam v. Elmore*, 33 Law Tim. Rep. 265.

DISMISSAL OF BILL.—*Right of defendant to dismiss bill without costs.*—A defendant is not entitled to dismiss a bill upon conceding all that the plaintiff demands without paying the costs, and the court will not, upon a motion for such dismissal, go into the merit of the case. In consequence of the doubtful expression in the authorities, the costs of the motion were reserved to the hearing. *Wallis v Wallis*, 28 Law Journ. Ch. 441.

EVIDENCE.—*Oral examination at hearing—Time for making order for.*—15 & 16 V. c. 86, s. 39.—By the 39th section of the Chancery Procedure Amendment Act (15 & 16 V. c. 86), it is provided that, "Upon the hearing of any cause depending in the said court, whether commenced by bill or by claim, the court, if it shall see fit to do so, may require the production and oral examination before itself of any witness or party in the cause, and may direct the costs of and attending the production and examination of such witness or party to be paid by such of the parties to the suit, or in such manner as it may think fit." In the following case, the defendants having made affidavits in the cause, and the plaintiff having set down the cause for hearing upon a motion of decree, the latter moved, previously to the hearing, that the defendants might be ordered to attend the hearing in order

that he might then have an opportunity of cross-examining them; but it was held that the discretion given to the court by the 39th section of the New Procedure Act was one which should be exercised at the hearing, and not before, and no order was made upon the motion. *Raymond v. Brown*, 43 Law Tim. Rep. 311.

EVIDENCE.—*Oral examination of a party at the hearing.*—The court will not make an order before the hearing for a party to attend at the hearing for oral examination, under the 39th section of the Chancery Improvement Act. The discretion vested in the court under that section ought to be exercised at the hearing, not previously. *Raymond v. Brown*, 7 Weel Rep. 625.

MORTGAGE.—*Foreclosure—Subsequent incumbrancers—Sale.*—A first mortgagee filed a bill of foreclosure, and asked for a decree. Subsequent incumbrancers asked, under the 15 & 16 V. c. 86, s. 48, for a sale of mortgaged estates. The plaintiff not consenting, the court directed the subsequent incumbrancers to deposit a sum of £20 0 to cover the expense of any ineffectual attempt to sell, and also directed a reserved bidding to be fixed, sufficient to cover the amount due to the plaintiff, and made an order for sale of the estate within a given time and foreclosure in default. *Whitbread v. Roberts*, 28 Law Journ. Ch. 431.

SUBPŒNA TO HEAR JUDGMENT.—*Motion to set aside—15 & 16 V. c. 86, s. 38, and subsequent order of court thereunder—Time for closing the evidence.*—A subpoena to hear judgment was issued and the cause set down for hearing by the plaintiff, pending the cross-examination of affidavit witnesses. On a motion to set aside such subpoena and to strike the cause out of the registrar's book and the cause list, on the ground of irregularity: Held, that the subpoena was not irregularly issued. Held, also, that the time for closing the evidence under the 15 & 16 V. c. 86, s. 38, and the subsequent orders of court thereunder, ends when the period for cross-examination or re-examination of affidavit witnesses commences. *Dowson v. Solomon*, 33 Law Tim. Rep. 267.

COMMON LAW.

AMBASSADOR.—*Privilege—Exemption from suit.*—The public minister of a foreign state, accredited to, and received by, her Majesty, having no real property in this kingdom, and having done nothing to disentitle him to the privileges generally belonging to such public minister, cannot be sued against his will in the courts of this country. *Magalene Steam Navigation Company v. Martin*, 7 Week. Rep. 598.

DISTRESS DAMAGE FEASANT.—*Reasonable time to remove cattle after trespass, and before distress—Question of fact upon the evidence for the jury—Fencing land from highway.*—The following case arose from the defendant not having kept his fences next the highway in a proper state of repair:—It appeared that the plaintiff's men were driving thirty-six oxen along a road, between five and six o'clock of an evening in November; twenty-three escaped into a field of defendant's adjoining the road through

gaps in his fence. The men drove on the remaining thirteen to the nearest obtainable place of safety for the night, and returned (having been absent about an hour) for the other twenty-three left in defendant's field. Defendant had then impounded them, for which the plaintiff brought this action. The learned judge at the trial directed the jury, that, under the circumstances of the case, the plaintiff's men had not removed, or tried to remove, the cattle within a reasonable time, and directed a verdict for the defendant: Held (Bramwell, B., dissentiente), to be a misdirection, and it was not a question of law for the opinion of the judge, but a question of fact, upon the evidence given, that should be determined by the jury, and consequently be a new trial. *Goodwyn v. Chaveley*, 33 Law Tim. Rep. 284.

EXECUTORY DEVISE.—*Contingent remainder*—*Divisibility of contingencies*—*Implied contingency*.—There is a distinction between a limitation over to a whole class, of whom only some are capable, and a limitation over in either of two events. The former is not good as an executory devise for those who are capable; in the latter case, in one event, the devise may operate as a contingent remainder, and in the other, as an executory devise. In the one case, the class is not divisible; in the other, the events are. D. (by will made before 1838) devised land to E. for life, remainder to such of her children as she might have, if a son or sons, who should live to twenty-three, if a daughter or daughters, to twenty-one; or if only one should attain the age, to such child in fee; in case all should die under ages named, or if she should have none, then to A. for life, with similar remainder to her children, and in case of death of A., without leaving a child, if a son, who should live to attain twenty-three, or if a daughter who should live to attain twenty-one, then he gave what such children or child would be entitled to to J. E. died, and afterwards A., neither ever having had children: Held, affirming decision of Queen's Bench, and reversing that of Exchequer Chamber, that the limitation over to J. might take effect as a contingent remainder upon A.'s death without ever having had a child. *Doe d. Evers v. Challis*, 7 Week. Rep. 622.

LANDLORD AND TENANT.—*Action for use and occupation of building land*—*Building articles*—*Agreement not amounting to an actual demise*—*Rent*—*Tenancy from year to year, when to be implied*—*Liability of assignee*—*Evidence*.—In an action for money, payable for the defendant's use of lands, messuages, and premises, by the plaintiff's permission, the particulars of demand claimed £241 as a year's rent, due Lady-day, 1858. It appeared, that by indenture made February 4th, 1858, between the plaintiff and E., the plaintiff agreed to grant leases of the whole or part of certain ground whereon houses then proposed to be built should be erected, so soon as one or more houses should be erected, to hold the same, and the said premises thereby agreed to be demised to E. and his assigns, from 29th of September, 1852, for ninety-eight years, paying for the first, second, third, fourth, and fifth years, and then, for the remainder of the term, rent increasing each year, from £30 to £285. E. covenanted for himself and his assigns to pay the several yearly rents reserved, and there was a

proviso for re-entry if the said yearly rents should be behind. During 1853 E. built on the land five houses, which were duly demised to him at rents amounting to £35, and until January 31, 1854, paid the several yearly sums covenanted to be paid. On the 31st of January, 1854, E. assigned the indenture, and all his interest under it, to the defendant, who, till Lady-day, 1857, paid to the plaintiff's agent, the several yearly sums, and took receipts, which in general purported, on the face of them, that the payments were made by the defendant, as rent due to the plaintiff under the deed of February 4th. In 1854 and 1856 the defendant built on the land a house and stables, and obtained two leases, according to the said indenture of agreement, reserving rents amounting to £9. The two last-mentioned rents added to the £35, and reserved on the demises to C., when deducted from £285, the highest rent, leave £241, the sum claimed in the action, and except these sums of £9 and £35, no payment was made to the plaintiff after Lady-day 1857. On the 28rd May, 1857, the defendant assigned to one W. the indenture of the 4th of February, and all interest therein. Evidence was also given for the plaintiff, the defendant having employed an auctioneer to let the property, and that some of it was a mere ballast hole. Upon the facts above the Common Pleas held, that the defendant was not liable; that the indenture of February 4th, 1853, did not amount to an actual demise; that the several annual sums reserved as rent were collateral sums paid for the right to occupy for the purpose of building under the agreement, that the tenancy of E., if any, was not a tenancy from year to year, but a tenancy at will; that when a tenancy from year to year is implied from payment of rent, it is because there are no other circumstances to account for the payment, except that it is paid for the occupation, but that in this case the facts showed that the payments were made by the defendant, not as rent, but in discharge of the obligation upon E. to pay: Held (affirming the judgment of the Common Pleas), that the plaintiff was not entitled to recover; that the facts afforded no ground for implying a new tenancy from year to year between the plaintiff and the defendant; and that the form of the receipts showed that the payments by the defendant were made, not as rent for the occupation of the premises, but in discharge of his engagement with E. *The Marquis Camden v. Batterbury*, 7 Week. Rep. 616.

MANORIAL RIGHTS.—*Right of shooting, &c.*—*Inclosure Act*—*Saving Clause*—*Allottees*.—The following case turned upon the construction of a reservation clause in an Inclosure Act, but it is capable of general application:—A., the lord of a manor, was owner of land (with a right to shoot, &c., over it) that was inclosed under an act which gave him an allotment in satisfaction of his right, as lord of the manor, in the soil. A saving clause provided that nothing in the act should lessen the right of the lord to any seignories, &c., but that he might enjoy the same, and any coal mines, &c., and also the right of shooting, &c., over the said inclosed land, and all other seignories, &c., to the manor incident: Held, that after the inclosure

had been completed, he was entitled to the right of shooting, &c., over the allotments to owners of land within the manor. *Ewart v. Graham*, 7 Week. Rep. 621.

MORTGAGE.—*Of fixtures — Surrender of lease by mortgagor.*—The right of a lessee to remove fixtures continues only during the term, and during such further period of possession by him as he holds under a right still to consider himself as tenant, and the right of his assignees can extend no further. But as to a surrender, it is laid down in Co. Litt. 338, b., that “having regard to strangers, who are not parties or privy thereto (lest by a voluntary surrender they may receive prejudice touching any right or interest they had before the surrender), the estate surrendered hath, in consideration of law, a continuance.” It appeared, in the following case, that A., having mortgaged to the plaintiffs the fixtures in a house, of which he was tenant, before the fixtures were severed surrendered his lease to his landlord, who demised to the defendant. The defendant then entered and took possession of the house, together with the fixtures: Held, that the mortgagor could not defeat his own act by the surrender, and that the plaintiffs had a right to enter and sever the fixtures notwithstanding, and that they were entitled, in an action of trover for the fixtures, to recover their value. *The London and Westminster Loan and Discount Company v. Drake*, 7 Week. Rep. 611.

MORTMAIN ACT.—9 Geo. 2, c. 36 — *Construction—Land conveyed to trustee, for the benefit of the parish poor, for building workhouse.*—A conveyance of land to trustees for the benefit of the poor of the parish, for building a workhouse, is not void as being under the Statute of Mortmain (9 Geo. 2, c. 36). *Burnaby v. Barsby*, 33 Law Tim. Rep. 286.

BANKRUPTCY.

ANNULLING.—*Disputed adjudication—Undue filing of declaration of insolvency.*—Where the act of bankruptcy was a declaration of insolvency given by the bankrupt, to be filed only on a certain event, and there was a misunderstanding between the solicitors to the different parties as to what the terms of such filing were to be, the court annulled an adjudication founded upon the filing of such declaration of insolvency, upon the ground that it was filed unduly, and that no sufficient act of bankruptcy was established. *Re a Disputed Adjudication*, 33 Law Tim. Rep. 291.

ASSIGNMENT.—*Of a contingent interest by a bankrupt to a purchaser, without notice of the bankruptcy—Right of assignees in bankruptcy to recover.*—By the Bankrupt Law Consolidation Act, 1849, s. 141, all the personal estate of a bankrupt, and all property which may be devised or bequeathed to him, shall become absolutely vested in the assignees for the time being, by virtue of their appointment; and after such appointment, neither the bankrupt, nor any person claiming under or through him, shall have power to recover the same, nor to make any release or discharge thereof, but such assignees shall have like remedy to recover the same in their own

names as the bankrupt himself might have had if he had not been adjudged bankrupt. In the following case, it was held that an assignment by a bankrupt of a contingent interest under a will, to a purchaser for value, without notice of a prior adjudication of bankruptcy, is void as against the assignees in bankruptcy, though notice of the assignment has been given to the trustee of the will prior to his having notice of the bankruptcy. *In re Combé's Trusts*, 7 Week. Rep. 609.

STATUTE OF LIMITATIONS.—*Admissions made by bankrupt after bankruptcy — Difference between schedule in bankruptcy and insolvency as regards the Statute of Limitation.*—An admission made by a bankrupt, in an affidavit sworn after his bankruptcy, is not a sufficient acknowledgment in writing of the existence of a debt which he swears he owes, to prevent that debt being barred by the Statute of Limitations: and even if the bankrupt had filed a schedule, and admitted the debt in it, it would be no bar to the statute if the debt had been previously barred. There is no analogy between the admission of a debt in an insolvent's schedule and a similar admission in a bankrupt's schedule. *Re Glendenning*, 33 Law Tim. Rep. 291.

Moot Points.

No. 111.—*Lost Property—Presumption of Finding—Enforcing Reward, &c.*

A. having lost a dog, advertised the same, and offered a reward of ten shillings to any one returning the same to him within fourteen days, and stating that any one detaining him after such notice would be proceeded against, &c. After the expiration of fourteen days from the advertisement, A. sees the dog following B., and thereupon claimed it: but as the fourteen days had expired, A. declined to give the reward offered, and B. consequently declined to give up the dog. *Quære*.—1st. Is the finder of lost property presumed to have seen an advertisement, when inserted in a public newspaper, as, for instance, the *Times*? 2ndly. If so, is B. punishable, and how, for detaining the dog? 3rdly. Will it be a sufficient excuse that the dog was not found till after the expiration of the fourteen days? 4thly. From what time will the fourteen days be deemed to run—viz., from the date of the advertisement, or from the finding of the dog?

JOHN W. S. LAVENDER.

No. 112.—*Scotch Ministers—Sitting in Parliament.*

Does the 41 G. 3, c. 73, exclude the ministers of the established Kirk of Scotland from sitting in Parliament? Would it exclude those who have holy orders in the Episcopal Church of Scotland?

JOHN W. S. LAVENDER.

No. 113.—*Is the Authority of a Stakeholder countermandable?*

Will some correspondent inform me whether the authority of a stake-

holder is or is not countermandable. My own impression is, that it is not. If there is any decision on the subject, I should be glad of a reference to it.

JOHN W. S. LAVENDER.

No. 114.—*Devise.*

The following is an extract from a will made since 1st of January, 1838 : —“ And the said estate thus charged, or part remaining, I give, devise, and bequeath to my son G. B. during his natural life, as like to his legitimate issue, if he has or leave any ; but if he dies without issue, I give and bequeath the same to my daughter C. B.” Now G. B. died, leaving lawful issue.

Quære, will this estate descend to such issue in fee, or for life only ?

M. GEORGE BOOTY.

No. 115.—*Surety.*

A. agreed with the trustees of a turnpike road for taking the gates, and B. joined as his surety. A. ran away, owing a large sum to the trustees, when they sued B., when he threatens to leave the country. Can a *capias* be issued against B., the surety ?

M. G. BOOTY.

No. 116.—*Vendor dying—Infant Heir—Specific Performance.*

In 1827, A. contracted with B. for the sale of his estate, and a few days afterwards died intestate, leaving an infant heir. A.'s widow administered. B. refused to complete the contract on account of the infancy of the heir-at-law. Could A.'s widow have obtained a decree for specific performance, and had the Court of Chancery power to make an order for the heir-at-law of A. to convey the legal estate to B. ? (see *Sug. Vend. & Purch.* 10th edit. vol. 1, p. 321, et seq.).

M. G. BOOTY.

No. 117.—*Mortgage for Old and New Debts.*

A. B. devised all his estate to his son, C. D., subject to the payment of his debts ; one of the creditors advanced a further sum to C. D., who gave a mortgage for both sums. Can the mortgagee retain his security as well for the old debt as for the money advanced to C. D. ?

JOHN WILLCOX.

No. 118.—*Fraudulent Conveyance—Marriage Settlement.*

In 1830, in consideration of an intended marriage between A. (a widow) and B., certain messuages were conveyed to trustees (C. and D., who never acted), upon trust to pay the rents and profits thereof to A. for her life, remainder to the use of B. for life, remainder to the use of E., the son of A. by a former marriage, his heirs and assigns for ever. The rents were always paid to A., the wife of B. In 1836, A. and B. mortgaged the estate, which was sold in 1838 by the mortgagee, under the power of sale, who had notice of the settlement.

The mooter wishes to know if the conveyance to the trustees is valid as against the *bonâ fide* purchaser for a valuable consideration, under the power of sale (vide 27 Eliz. c. 4, ss. 2, 4), and he would be obliged by reference to authorities.

FLAVIUS.

No. 119.—*Powers of New Divorce Court.*

A lady, who some years ago quitted her husband's house on account of his adultery with a person, who still lives with him in open adultery, wishes to know if any case similar to her own has been before the Divorce Court.

The writer believes there has been such a case (wherein a divorce was decreed) decided only recently, but cannot find a report of it. Perhaps some correspondent may be able to refer him to such report, if there has been such a case; and if no such case, it may be a point worthy of consideration:—Whether a woman, who leaves her husband's home, can, under any circumstances, be entitled to a divorce; and whether, in the case mooted, the court would have regard to the husband still cohabiting with another person, and also, that the wife has been living with her parents within a quarter of a mile of her husband's house, and the husband never asked her to return; and has the court power to order a settlement to be made on the wife after the divorce has been decreed (see *Keats v. Keats, and Another*, Law Journ., July, 1859). Opinions would oblige

W. W.

No. 120.—*Priorities between Mortgagees and Legatees.*

A. B., a testator, made his will, and (inter alia) devised his real estate to C. D. and E. F., subject to the payment of his debts and legacies. The testator died in 1800. C. D. and E. F., in 1810, made a mortgage for £1,000 to G. H. of the real estate so devised, and in the mortgage deed, it was recited that "it was found necessary to raise £1,000 for payment of the testator's debts and legacies." In case of a deficiency of assets, which would have the preference—the mortgagees or the legatees?

GEORGE R. ROGERSON.

No. 121.—*Delegation of Trust.*

A testator charged his real estate with the payment of his debts and legacies, and subject thereto devised the same to A. B. in fee, who, being about to leave England, conveyed the lands to C. D. in fee, in trust to sell, with power to give discharges to purchasers, and after deducting the expenses, to pay the residue to him (the devisee) without any reference to the charge. On the sale of the lands by C. D., can the title be objected to on the ground that the devisee is, by reason of the charge, a trustee for the creditors and legatees, and cannot delegate the trust, and that C. D. cannot give a good discharge for the purchase money?

GEORGE R. ROGERSON.

No. 122.—*Party taking down his own House.*

If A. B., by taking down his house, injured the house of C. D., is he liable, provided there be no negligence.

GEORGE R. ROGERSON.

No. 123.—*Death of Devisee in Testator's Lifetime—Curtesy.*

A., by his will (made since 1837), gave certain land to his daughter B. in fee. B. died in the testator's lifetime, leaving issue living at his decease. Is the husband of B. entitled to curtesy?

E. J.

No. 124.—*Mortgage—Decree for Reconveyance—Covenant to Produce, &c.*

Is a mortgagee, who has been decreed to reconvey to the mortgagor one undivided moiety of the mortgaged estate, under any legal obligation to enter into a covenant for production of the deeds, or merely to furnish attested copies of them?

W. A. B.

No. 125.—*Notice of Covenants in Lease.*

A. having entered into an agreement with B. for an underlease, without inquiring into the covenants contained in the original lease to B., has constructive notice of all usual covenants in B.'s lease. Quære, whether he has such notice of unusual covenants?

A. K. R.

No. 126.—*No Consideration for Bill.*

In an action by F., an indorsee, against G., the acceptor of a bill of exchange, will a plea by G. of "no consideration for his acceptance" be held good on special demurrer? I am of opinion that it would not.

A. K. R.

No. 127.—*Waste by Tenant for Life.*

A., on the marriage of his son, settled an estate on himself for life, without impeachment of waste, remainder to his son in fee. Is A. at liberty to pull down the mansion or commit any voluntary waste he may choose? and will the court grant an injunction to stay waste, and compel A. to restore the house to the same state as before? I think he would not be justified in committing the waste, but shall feel obliged by the opinions of correspondents.

A. K. R.

No. 128.—*Barring Entail.*

In 1816 A., a tenant in tale male, suffered a recovery and declared uses, which proved to be void. By his will he left the estate to D., and died in 1857. A.'s eldest son now claims the estate under the entail, but, as I think, without any grounds. Did not the recovery bar the entail, and the uses declared proving void, did not A. take back an estate in fee?

A. K. R.

No. 129.—*Renewal of Leases by Trustees.*

Have trustees, to whom a discretionary power of renewing leases is given, an arbitrary power of renewal, or must they renew them when most for the benefit of the cestui que trust?

A. K. R.

Answers to Moot Points.

No. 71.—*Vested and Contingent Remainders (ante, p. 165).*

Both these remainders are contingent, being limited to take effect upon uncertain events; for it is altogether uncertain whether A. will be living

on the determination of the first estate or not, and equally so whether B. will survive A. or not. MONITOR.

No. 77.—*Stamp—Agreement—Reference to Unstamped Conditions*
(*ante*, p. 196).

If the mooter would refer to the schedule at the end of the Stamp Act, 13 & 14 Vic. c. 97, under the head agreement, he would see "that where the matter of any agreement shall be of the value of £20 or upwards, whether the same shall be only evidence of a contract, or obligatory upon the parties from its being a written instrument, together with *every schedule receipt, or other matter put or indorsed thereon, or annexed thereto*, the duty is 2s. 6d.; and where the same contain 2160 words, then for every entire quantity of 1080 words contained therein *over and above the first 1080 words* a further *progressive* duty of 2s. 6d." Therefore, in this case, where the particulars and conditions are annexed to the agreement (the word *annexed* being the very word of the act), and they, together with the agreement, contain more than 1080 words or fifteen folios, the further progressive duty of 2s. 6d. must be paid. JO. IBBERSON.

No. 78.—*Right of Way—Effect of Non-user* (*ante*, p. 196).

It is laid down in Woolrych, on the Law of Ways, p. 74, that ways, like commons, being collateral to the land, cannot be divested. So that a party entitled to them does not, by *non-user for a time*, lose his estate and interest. They are incorporeal hereditaments, and remain attached to the soil which gives the right to use them. But an adverse possession of twenty years against the proprietor of a way, as for example, by enclosing against him, will bar his right to recover in a possessory action, and the party will, in such a case, be left to his remedy by assise, or other real writ." There is also a section in Cruise's Dig., vol. 5, p. 228, to the like effect. Therefore, I am induced to think, that in this case, where the right of road is granted by deed to A. B., he will not, by *non-user for a time*, have lost his right of road, but if the grant had been acquired by twenty years' uninterrupted enjoyment, then I am inclined to think (grounding my opinion on the judgment of Littledale, J., in the case of *Moore v. Rawson*, 3 Barn. and Cress. 339) that A. B. would, by *non-user* for twenty years, have lost his right of way. JO. IBBERSON.

No. 97.—*Clergyman creating Equitable Charge* (*ante*, p. 235).

After considerable conflict of authority, the Lord Chancellor, in *Hawkins v. Gathercole* (24 L. J. Ch. 332), ultimately decided this point in the negative (see First Book, p. 75). S. J. E.

No. 98.—*Voluntary Settlement—Extent of—To Collateral Relations*
(*ante*, p. 235).

This question is very fully considered by Mr. Dart (*Vendors*, p. 578, et seq., 3rd ed.).

He states, that the important question is, first, whether the collaterals

are within the contract; and secondly, whether (if so) there was sufficient consideration for such a contract. And upon the first question submits, that where the limitations over are in favour of the collateral relations, not of the settlor, but of the other contracting party (whether wife or husband), the settlement itself may be considered *prima facie* evidence of such other party having stipulated for their insertion. So, where, in a settlement of the intended wife's estate, the limitations are in favour of her own collateral relations in derogation from the husband's right as tenant by the curtesy. But if such a stipulation cannot be presumed or proved, the limitation must be considered voluntary, and void as against a *bonâ fide* purchaser for value. And, in support of his views, refers to *Osgood v. Strode*, 2 P. Wms. 245; *Sutton v. Chetwynd*, 3 Mer. 249; *Johnson v. Legard*, 3 Madd. 283; *Cotterell v. Homer*, 13 Sim. 506, &c.

And as to the second point, argues: if, upon marriage, the husband's estate were settled upon the wife, giving her an absolute power of sale and control over the purchase money, effectually excluding him from any future participation therein, and without securing to him the indirect advantage of a permanent provision for her, the marriage, it is conceived, would clearly be a sufficient consideration for such a settlement, although she might at once sell the estate and hand over the purchase money to *her own relations*; and if so, upon what principle can it be contended the marriage would not equally have been a sufficient consideration for any limitation in favor of *such relations*, which might, upon *her stipulation*, have been introduced into the settlement (citing *Jenkins v. Keynies*, 1 Lev. 237; *Heap v. Tonge*, 9 Ha. 104; *Ford v. Stuart*, 15 Beav. 500; and 21 L. J. R. Ch. 542).

And he adds, that where the settlement is made by the aid of a party other than the husband and wife, such limitations seem unquestionably valid (*Jenkins v. Keynies*, *Osgood v. Strode*, *ubi sup.*).

And that limitations to collaterals, which *precede* a limitation in favor of the issue of the marriage, will, it seems, be valid (*Clayton v. Earl Winton*, 3 Mad. 302, n). So, the remoteness of a limitation (2 P. Wms. 255), or its being subsequent to a vested estate tail (*Sug. 932*; *Lord Penham's Case*, 2 Lev. 105), may, perhaps, be sufficient to sustain it.

The question, therefore, to be considered in cases of this kind, appears to me to be, whether or not it can be *presumed*, and if not presumed, whether it can nevertheless be *proved*, that the limitation in favour of the collateral relations was inserted in pursuance of a direct stipulation. And, so far as presumption goes, the moot point is not sufficiently explicit as to the facts to enable an opinion to be formed. The question of *proof*, dehors the settlement itself, is, of course, dependent upon the evidence that can be adduced.

S. J. E.

No. 98.—*Voluntary Settlement—Extent of—To Collateral Relations*
(*ante*, p. 235).

It seems to have been decided, in *Cormick v. Trapaud* (6 Dow. 86), that limitations to collaterals in a marriage settlement are voluntary against a

subsequent sale to a purchaser for valuable consideration. Limitations in marriage settlements to collateral relations are voluntary (*Reeves v. Reeves*, 9 Mod. 132).

A. K. R.

No. 98.—*Voluntary Settlement—Extending to Collateral Relations*
(*ante*, p. 235).

I am of opinion that the marriage consideration does not extend to *collateral considerations* so as to support them against a subsequent sale to a *bonâ fide* purchaser; for in *Smith's Manual of Equity* (5 ed. p. 86), I find the following.—“A collateral relation, who is the object of an ulterior limitation in a settlement, is not a mere volunteer, for though he may not be within the consideration of the marriage, he is within the contract, but yet it has been held *he cannot prevail against a purchaser*.” I have looked dilligently into the authorities cited by the mooter, but finding the above, which is more recent, I must adhere to my opinion, as above expressed.

JO. IBBERSON.

No. 99.—*Promise of Marriage* (*ante*, p. 235).

I certainly think a woman cannot compel any man to marry her, even if he has promised to do so. It would be quite inconsistent to think that a man could be married to a woman in *direct opposition to his own wish*.

The only remedy the woman has is an action for breach of promise (proving damages), to support which she, as the plaintiff, must prove that she has made an offer to marry defendant, and that he has refused (see the case of *Gough v. Far*, 2 Carr. & P. 681; also cited in *Harrison's Digest*, vol. 1, p. 3219).

J. W.

No. 100.—*Defamation* (*ante*, p. 235).

I incline to think A. B. is liable to an action for defamatory libel by C. D.

The memorandum written by A. B. certainly affects C. D.'s reputation, and has a great tendency to injure and ruin him in the opinion of his employers. The Moot Point states they have suspended him until he has proved, to their satisfaction, the falseness of the accusations made by A. B.

I take it, therefore, that C. D. has incurred special damage, and is in a position, therefore, to commence proceedings against A. B., either by an *action for damages*, or by *indictment* as a public offence, as every libel has a tendency to a breach of the peace, by provoking the person libelled to break it (see *Blackstone's Commentaries*, by Stephen, vol. 3, p. 470).

By the late act of 6 & 7 V. c. 96 (amended by 8 & 9 V. c. 75), it is provided, that in pleading to any indictment or information for a defamatory libel the defendant may, by way of defence, allege the *truth of the matters charged*; and further, that it was for the public benefit that the matters charged should be published, showing the facts by reason whereof it was for the public benefit; and that, if after such plea the defendant shall be *convicted*, it shall be competent to the court, in pronouncing sentence, to consider whether the guilt of the defendant is aggravated or mitigated by the plea and the evidence thereon.

J. W.

No. 100.—*Defamation (ante, p. 235).*

I confess I am unable to discover where the difficulty in this point arises. To my mind, A. B.'s memorandum is as pure an example of libel as can be imagined, and C. D. has two courses before him: he may either indict A. B., or bring an action against him. Of course, if the charge proved to be true, the indictment or action would fail.

CAUSIDICUS.

No. 101.—*Investment of Deposit on Sale (ante, p. 235).*

I apprehend that, in this case, if there had been a fall in the funds, the solicitor would have been liable for the loss occasioned thereby; therefore I apprehend that he alone is entitled to the profit by reason of the rise (see Sugden on Vendors and Purchasers, 11th ed. p. 51; and, also, the case of *Roberts v. Massey*, 13 Ves. jun. p. 561).

JO. IBBERSON.

No. 101.—*Investment of Deposit on Sale (ante, p. 235).*

I am of opinion that the fact of the vendor and purchaser both being ignorant that the money had been invested would effectually bar any but the person so risking the money (in this case the solicitor) from being entitled in any way to share in the profits.

M. GEO. BOOTY.

No. 101.—*Investment of Deposit on Sale (ante, p. 235).*

Mr. Dart says, of an auctioneer (p. 114, et seq., 3rd ed.), that until the purchase is completed he is a stakeholder of the deposit for both parties, and that neither vendor nor purchaser, whichever may become entitled thereto, can claim interest thereupon, although the auctioneer may actually have made a profit of it; and that any loss occasioned by his insolvency, or *mala fides*, falls on the vendor as his employer.

And further (p. 124), that if a purchaser become entitled to a return of his deposit, he will not be prejudiced or advantaged by any fall or rise in any securities on which it may have been invested with his assent (see also *Law Propositions*, tit. Auctioneer).

I think, therefore, that in the case put, the purchaser would not, in any event, be entitled to the profit on the investment but in the event of the vendor becoming entitled to the deposit; I do not feel confident that the same rule would apply to his solicitor as would to an auctioneer, though, I think, upon principle, it should; for as the solicitor, *quâ stakeholder*, has, it would seem, all the liabilities of an auctioneer, so I think it is but fair he should have the like advantages.

S. J. E.

No. 102.—*Copyhold—Merger (ante, p. 235).*

When a freehold and copyhold interest in the same premises unite in the same persons and in the same right, the copyhold interest becomes extinguished. B. therefore takes A.'s former copyhold under the devise of the manor.

S. J. E.

No. 102.—*Copyhold—Merger (ante, p. 235).*

Merger is thus defined by Blackstone: "Whenever a greater estate and a less coincide and meet in one and the same person, without any inter-

mediate estate, the less is immediately annihilated, or, in the law phrase, is said to be *merged*." Now, in the case of copyhold property, the freehold is in the lord, and the tenant has merely a kind of tenancy at will (2 Bl. Com. 150). It follows from these principles, that where the freehold and copyhold interests are united in the same person, the latter becomes merged in the former. This view is supported by Mr. Kerr's recent edition of Blackstone, in which he says, "If copyhold and freehold titles become united in one person, *extinguishment* takes place, the copyhold interest merging and becoming extinguished in the superior one." I am therefore of opinion that the copyhold estate merged in the freehold, and, in the latter character, passed by the devise to B.

CAUSIDICUS.

No. 102.—*Copyhold—Merger* (ante, p. 235).

I am of opinion that the copyhold estate will merge and become extinguished in the freehold.

Mr. Stephen, in his Commentaries on Blackstone (vol. 1, p. 213), thus lays down the law on the point:—"A copyhold is capable of being turned into *freehold* by the lord's conveying the freehold of the particular premises, or releasing to him the seignorial right; which is called *enfranchisement*" (also, see Watkins' Copy. 362).

Where a person is a copyholder in tail, and the lord grants the freehold of the copyhold to him in fee, *the copyhold, though entailed, is extinct* (Dunn v. Green, 3 P. & W. 9; Parker v. Turner, 1 Vern. 458).

Therefore, after considering the foregoing authorities and cases, I have not the slightest hesitation in saying that the copyhold is merged in the freehold, and consequently will pass by the devise to B., and not to the trustees for sale.

J. W.

No. 102.—*Copyhold—Merger* (ante, p. 235).

In *Dunne v. Green* (3 P. W. 9) the lord granted the freehold of the copyhold to a copyholder in tail; it was decided, that the copyhold, though entailed, was extinct. I think, therefore, that in the present case the copyhold merged in the freehold of the manor, and passed by the devise to B. (Parker v. Turner, 1 Vern. 458).

A. K. R.

No. 104.—*Landlord and Tenant—Reparation* (ante, p. 236).

I am of opinion that the landlord would be liable for the repair of the windows.

A. K. R.

No. 104.—*Landlord and Tenant—Reparation* (ante, p. 236):

I think the liability to repair windows would be on the tenant, even though they should be broken by a hail-storm, unless it should be particularly mentioned at the time of tenant's taking the house who was to be liable for damages done by storm.

M. GEO. BOOTH.

No. 104.—*Landlord and Tenant—Reparation* (ante, p. 236).

From the authorities I have referred to, there appears to me to exist a conflicting opinion (although all the authorities agree that the tenant is

liable to keep the house wind and water tight); for, on referring to Chitty on Contracts, I find the following passage:—"Thus, if a *window* or tile were even accidentally broken, it seems that he would be liable if he did not repair it, provided the plain consequence of his neglect would be a serious damage to the house from the wet or the like." And in Woodfall's Landlord and Tenant, p. 419, there is the following passage:—"A covenant by a lessor to repair the external parts of a demised house (as in this case) comprises the partition wall between it and an adjoining house; and where the adjoining house was pulled down by other persons, whereby the wall was damaged, and the lessor did nothing to prevent it sinking, and suffered it to continue in a ruinous state, and refused to repair it, he is liable for the expenses the lessee is put to in rebuilding the wall, and for glass broken by the sinking of it, but not for rent and the expenses of the lessee for other premises during the progress of the repairs." After consulting and looking at the authorities I have mentioned, I am of opinion that the tenant is clearly liable to repair; for, in the case put, the windows are broken by the act of God, and not by the landlord's negligence (vide the cases of *Wise v. Metcalfe*. 10 B. & C. 312; and *Green v. Eales*, 1 Gale & Dav. 468).

JO. IBBERSON.

No. 108.—*Landlord and Tenant* (ante, p. 236).

By 5 Ric. 2, s. 1, c. 8, forcible entries are made punishable by imprisonment, and an indictment may be sustained, whether the defendant had a right of entry or not, and whether any person is within the house or not, especially if a dwelling-house. But I think the landlord is not in the present case liable in a civil action at the suit of the tenant. The tenant's remedy, if any, is by indictment for forcible entry; and he cannot, I think maintain trespass (*Turner v. Meymott*, 7 Moore, 574). If, however, the tenancy had not been duly determined, an action of trespass would have lain against the landlord (8 H. 6, c. 9). But, as this action is at the suit of the party, and only for the right, it lies only where the entry for the defendant was not lawful; for though a man enter with force, where his entry is lawful, he shall not be punished by way of action; but he may be indicted by the statute, be his right ever so good (*Dalt. c. 129*).

A. K. R.

No. 109.—*Private Road* (ante, p. 237).

I decidedly think that A. cannot be compelled even to close, much less to lock, his gates. A. is to all intents and purposes as much a sufferer by strangers using his private road as the commissioners of the road by the evasion of the toll. The remedy is in the hands of the latter—viz., to institute proceedings under the statute 3 Geo. 4, c. 126, against any person they may detect making use of the road in order to evade the bar.

A. K. R.

No. 113.—*Is the Authority of a Stakeholder countermandable?* (ante, p. 284).

Yes. In *Varney v. Hickman* (17 Law Journ. C. P. 102) the action was brought by the plaintiff against the defendant, a stakeholder, to recover

£20 deposit. The following memorandum was put in evidence by the plaintiff: "Mr. Varney bets Mr. Isaacs £20 that his horse will make the best of his way for two miles against Mr. Isaacs' horse. The match to take place, &c. The money to be deposited with Mr. Hickman." This was signed by Hickman for Isaacs, and both the plaintiff and Isaacs deposited £20 in the hands of the defendant. Before the time appointed for the race the plaintiff gave the defendant notice that he repudiated the wager, and demanded back his money; and it was held, that he was entitled to recover it.

Until the stakeholder has actually handed over to the winner the amount deposited with him it may be recovered back by the depositor (*Cotton v. Thurland*, 5 T. R. 405; *Lalausade v. White*, 7 T. R. 535; *Farmer v. Russell*, 1 B. & P. 299; *Tenant v. Elliot*, *Ib.* 3; *Marryat v. Broderick*, 2 M. & W. 369); but not afterwards (*Howson v. Hancock*, 8 T. R. 575). If two persons, however, jointly contribute certain sums, and place the whole amount in one sum in the hands of a third party, in order that he may award it to the winner, there must be a joint revocation of the joint authority (*Lord Kenyon*, 1 Peake, 175; *Parke, B.*, 2 M. & W. 372; *Wilde, C. J.*, *Batty v. Marriott*, 17 Law J., C. P.; 4 C. B. S. C.); but if each bring his separate amount, and deposit it himself in the hands of the stakeholder, either is at liberty to demand the return of his moiety, so long as the whole amount has not been paid over to the winner (*Eltham v. Kingsman*, 1 B. & Ald. 687; *Egerton v. Furzman, Ry. & Mood*. 214; *Varney v. Hickman*, *ut supra.*)

A. K. R.

No. 113.—*Is the Authority of a Stakeholder countermandable (ante, p. 284).*

As the stakeholder holds for the mutual benefit of the parties interested, his authority is not countermandable without their joint consent.

EQUITAS.

No. 114.—*Devise (ante, p. 285).*

The rule to be observed in the construction of wills is, that the intention of the testator shall be observed as far as possible; and since, in the present case, I think the intention of the testator was, that his daughter C. B. should take the property only in the event of the failure of G. B.'s issue, I am of opinion that the estate will descend to G. B.'s issue in fee.

A. K. R.

No. 114.—*Devise (ante, p. 285).*

I think that as G. B. had lawful issue *living at the time of his death*, such issue will take an estate in fee (1 Vic. c. 26).

C. J.

No. 115.—*Surety (ante, p. 285).*

By the statute 1 & 2 Vic. c. 110, by which the issue of a *capias* is now regulated, whenever it can be shown to the satisfaction of a judge of one of the superior courts, that a plaintiff has a cause of action against a defendant to the amount of £20 and upwards, &c., such judge may direct that a (*writ*) *capias* may be sued out.

Now, I think it clear, that in this case the trustees have a cause of action against B., and if that cause of action is £20 and upwards, I feel little hesitation in saying that a *capias* could issue against him. EQUITAS.

No. 116.—*Vendor Dying—Infant Heir—Specific Performance* (*ante*, p. 285).

I apprehend B. had no power to rescind the contract for sale, because of the infancy of the heir at law (*Shannon v. Broadstreet*, 1 Sch. & L. 58; *Smith v. Bowen*, 1 Mod. 25), neither could the infant heir enforce specific performance (*Flight v. Bolland*, 4 Russ. 292, 670). In *Roberts v. Marchant* (1 Ph. 370), which was a suit by the administrator of a vendor of real estate to enforce specific performance of a contract for sale, the heir at law was held to be a necessary party, but as the heir in the case now under consideration is an infant, I think the Court of Chancery has power to make an order for him to convey the legal estate. EQUITAS.

No. 117.—*Mortgage for Old and New Debts* (*ante*, p. 285).

As C. D. gave the mortgage for both debts, I consider the mortgagee is entitled to retain his security till both are paid. C. J.

No. 119.—*Power of New Divorce Court* (*ante*, p. 286).

I cannot refer to the case, but think there has been such an one, and that the lady would succeed in getting a divorce, but do not think the court would order a settlement to be made on the wife after the divorce has been decreed. C. J.

No. 120.—*Priorities between Mortgagees and Legatees* (*ante*, p. 286).

I should think the mortgagees would have the preference, but think they would be bound to see that the assets really were insufficient. C. J.

THE MOOT POINTS.

DEAR SIR,—I beg to offer a suggestion to your Correspondents on Moot Points, which might have this one good practical result—viz., the better discussing of the Moot Points.

It is, that each correspondent, having a list of the other correspondents, send his Moot Point to any one he pleases; and when he receives a reply, then, if he considers it necessary, let him, by further correspondence, discuss the merits of the reply and advance authorities, *pro*. and *con.*, for further consideration, and this correspondence he could carry on until he becomes perfectly cognisant of the law on the particular subject mooted. This plan, if it has no other recommendation, has that of one more agreeable to those who, having only very small legal knowledge, venture to answer the Moot Points sent to them, and find others give replies adverse to theirs, and probably a reply that A., B., or C. has not considered the law of the subject.

When a decision has been arrived at as to the law on the subject mooted, the mooter may then send the point mooted, the authorities considered, and the decisions arrived at, for insertion for the benefit of others.

Many replies to Moot Points which are inserted in the *LAW CHRONICLE* are only partial solutions of the law on the subject, and many are far from being correct law. Now this, by corresponding "*inter se*," might be remedied, and true law attained.

Many numbers of the *LAW CHRONICLE* contain more than one answer to the Moot Point, some of which are right, some decidedly wrong. Now, I maintain, that out of your numerous readers there are some, if not many, who, with only a short experience of the law, are occasionally misled by those which are wrong, because it may be a better worded reply than the one which contains the true law, and perhaps as one correct reply has been given, no one would like to give pain or offence by sending another reply, agreeing with the one, and saying the other was erroneous; so the wrong impression remains, and will remain.—Yours, &c., W. W.

NOTE.—We have always insisted on the benefits of an *inter se* correspondence, but could never induce any articulated clerks to adopt it. Eds.

ARTICLED CLERKS BILL.

Contrary to all expectation, this bill was not passed in the late session, an opposition, or rather objection, having been made almost on the last day of the session. No doubt the bill will be brought forward in the forthcoming session, and then an opportunity will be afforded of considering and discussing its provisions, some of which, we are informed, are considered objectionable. Our attention has been directed to the proposed provision that no articulated clerk, *now* or hereafter bound, shall hold any office or engage in any other employment, save as provided by the 6 & 7 V., and it has been asked what is the object which the framers of the bill have in view. And again, particular exception is taken to the bill being applied to persons *now* under articles, but we should apprehend that the provision must be confined to articulated clerks now articulated hereafter engaging to hold any office, &c., and that it cannot be meant to compel an articulated clerk to resign an office which he may be holding at the time of the passing of the act, and which would not, prior to such act, have invalidated his articles. However, these and other points connected with the bill will be better ascertained when the measure is re-introduced into Parliament.

LEGAL EDUCATION.

It is remarked by Lord Campbell upon legal education, "that those men who are eagerly bent on study will improve themselves; they will be self-taught, and will conquer all disadvantages; but serious inconveniences arise from there not being better instruction provided for those who are to practise as advocates. In England we have had a succession of men of very great talent and very great distinction, but I think we have not, generally speaking, had great jurists. The knowledge of the Roman civil law, which is the foundation of jurisprudence, has been very much neglected, and generally speaking, there has not prevailed at the English bar that liberal acquaintance with the codes of continental nations which we ought to enjoy."

"There can be no doubt," it is observed by the same noble and learned lord, "that in the present want of system a great deal of time is wasted by the student, from his being left entirely without a guide to his own researches, discoveries, and exertions. However eminent men in all public departments have been already produced at the bar, such men would have been equally great if they had had a regular legal education, and many of them would have performed their duties in a still more distinguished and satisfactory manner, while many of those who have acquired high office by their abilities and their interest, being deficient in legal acquirements, have not performed the duties assigned to them at all in a manner so well as they would have done if they had been more particularly and more systematically educated."

Some persons, whose opinion is deserving of all respect, still insist that they think a better lawyer is made by working out his own way, and depending upon self-culture and unaided self-exertion, than by having the assistance of lectures, or the direction of professors, and thus having an easy road opened for him to walk over without difficulty. Yet this observation is never made with respect to the sister professions of medicine and theology.

It is impossible to deny, that notwithstanding the want of system, and the want of guidance and of assistance, some lawyers have been found of great and profound learning amongst the last and present generations. The names of a few such, both at the English and Irish bar—*rari nantes in gurgite vasto*—will occur. As to the latter, I doubt whether any improved system will give to the profession sounder, or more practical, or more accurate lawyers than the late William Saurin and Chief Baron Joy; or, if it is not invidious to mention a living example—than Robert Holmes, the father of the North-east bar. But in respect of a body of men, who number at the English bar about 2800, and at the Irish above 700, it is the mass, the majority for whom education ought to be insured. One must not judge of the profession at large from the select few who rise above every difficulty, and are exceptions to the general rule. Let the same argument be applied to the professions of medicine or theology, and the public voice will at once

condemn it as unsound. Even as to the few exceptions which the profession presents, would those persons have been less learned, or less systematic in their learning, if they had had the advantage, in their early course, of the guidance and education of experienced men? I have heard a very learned member of the Irish bench, now no more, who had read profoundly, and was solidly learned both in equity and law, say, that during a considerable period of his legal education, unassisted by any guiding hand, without the aid either of a pleader's or a conveyancer's office, he devoted from twelve to sixteen hours out of the twenty-four to legal study. A large portion of this time, which might have been advantageously occupied in other pursuits, was spent in learning much that he was obliged afterwards to unlearn, in mastering and committing to memory much recondite learning, which, when he came to the bar, he found to be useless or obsolete. No doubt it was an exercise of mind, and as such was valuable indirectly. "In all labour there is profit;" but the same exercise might have been employed in acquiring learning not obsolete, and which it would not have been necessary afterwards to unlearn.

Into how many errors does the student fall, how many erroneous notions are imprinted on his mind, and what difficulty he has in eradicating them in after years, when he works on at random, without guide or compass, through such a multitudinous sea of learning as our old text-books, digests, abridgements, reports, statutes, and decisions present—*aliæ super alias acervatarum legum cumulus*.

Ignorance is in this respect less injurious than error. It has been said of ignorance, it is blank paper; we may write upon it. Error is scribbled paper: we must first erase. Error must retrace her steps before she can go forward, and has therefore further to go than ignorance before she can arrive at truth. It is the saying of an old theologian, *qui semel aberrat non errorem bene explicat nisi regressus quasi novas vias ineat*, and of one yet older, Augustine, *melius est nescire quam errare*.

Lord Brougham observes, that "although many men learn law very accurately, and even profoundly, by their own studies, they would learn it better, and at all events they would learn it easier and save themselves a great deal of fruitless labour in acquisition if they had the benefit of a learned and skilful professor, accustomed to teach, and who was versed in the didactic art, which a person may be very ignorant of, and yet be very well acquainted with the subject which he teaches."

Mr. Bethell, a bencher of the Middle Temple, speaking in his evidence of the present state of the English bar, says—"I think it is obvious to every person who is thoroughly acquainted with the tone and manner of the education of young men, that their habits as students are directed to what you may denominate merely practical attainments, and that you can scarcely find an instance of a young man who has commenced his legal studies by laying anything like that broad foundation of the study of jurisprudence in such a manner as you would desire it to be done as a preparative to the practical details into which the student now almost immediately enters."

The period which the student spends in preparing for his profession, short as it is, is often the most important of his life. If what Cowper observes be true, that the colour of our whole life is generally such as the three or four first years in which we are our own masters make it, its importance can scarcely be over-rated. Yet this is the very period in education in which the student is left to his own devices, without guide or control, without any compulsory course of study, to read how, where, when, and what he best may. How many law students have felt with Spelman, *juris nostri cum vestibulum salutasse reperissemque linguam peregrinam, methodum inconcinnum, molem non ingentem solum, sed perpetuis humeris sustinendum, excidit mihi fateor animus.*

The moral character in after life is no less affected than the intellectual by the employment of this period. It is now that the importance of habits of mental exertion and moral control which he may have acquired or neglected in his school and college life is first practically evinced. Few pass unscathed through the ordeal. There are few of whom one can say, as Sir James Macintosh did of Francis Horner, who was so early lost to the profession, that by the cultivation of his understanding, his industry and pure taste, still more by modest independence, by steadiness and sincerity joined to moderation, by the stamp of unbending integrity, and by his conscientious considerateness, he raised himself at an early age to a moral authority which, without these qualities, no brilliancy of talents or power of reasoning could have acquired.

The main object of legal education ought to be, to guide the young student through the labyrinth which the law presents to the uninitiated, and to establish legal principles systematically in the mind — to ground him as a lawyer in the knowledge of principles as distinguished from a mere mechanical collector of cases.

A case lawyer is becoming every day more common, a lawyer of the former class is rare. The bench has of late years encouraged the citing of cases too much, and has thus countenanced the substitution of a mere *memoria technica* for broad and fundamental reasoning upon acknowledged and established principles of law. Undoubtedly the very best lawyers in the profession on both sides of the channel are amongst those who cite fewest cases in court, and in the opinions which they give on cases submitted to them. The show of multitudinous citation, whether relevant (or irrelevant, as is too often the case), takes with the gallery and with the young members of both branches of the profession; and the latest case often relieves a judge from the duty of canvassing or deliberating upon the principles which the case in argument involves, and from which the decision cited, if a right decision, necessarily flowed.

Mr. J. T. Graves, in his evidence, observes, that this system of quoting cases, instead of arguing upon legal principles, prevails to such an extent at the English bar as to perplex judges as well as to cloud the law itself; and Mr. Bethell, a very learned member of that bar, and a bencher of one of the inns of court, observes, "that an individual taking up a book of

modern reports, and observing the manner in which cases are argued, will not detect in them evidence of any great extent of reading, of any large acquaintance with the principles of the science of law, any familiarity with the works of any foreign or ancient jurists, which are deemed in all other countries to constitute the basis of legal education. He will observe in arguments a mere habit of calling upon the memory for the citation of what are more or less apt instances of adjudication of similar points found in the reports; and, in truth, the argument is most frequently a mere task of memory rather than of the enunciation and application of legal principles. Some step should be taken for checking the amazing number of reports, which will be found a most serious evil in the administration of justice.

"The accumulation of reports becomes now so great a burden upon the student and the judge, that not only is the student unequal to the task of anything like collecting or arranging them, but the judge is in perpetual apprehension lest some conclusion derived by him from principles may be found to be at variance with some reported decision contained some where or other."

Mr. Bethell adds, "although I have no doubt that the inconvenience might be remedied by a better system of preliminary education, grounded upon broader and more philosophic principles, which would check the practice too general amongst us of substituting decisions for what I may denominate reasoning upon principles; yet I think the evil of the multiplication of reports might receive a shorter and quicker remedy by some agreed on resolution by the judges on this subject."

This evil is well described by a foreign jurist, M. Camus, who ascribes its excess to an excess of vanity, not to a learned or profound spirit of law. *On n'a pas même la satisfaction de montrer qu'on a fait beaucoup de recherches. On cite donc et on cite des textes fort peu concluans, seulement pour faire voir qu'on les a connus.*

He recurs to this subject again, and impresses upon the younger members of the profession the true value of reading individual cases—*pour vous penetrer de la SCIENCE des Lois, et non pour faire parade d'une vaine erudition. C'est dans l'ensemble des raisonnemens et dans le plan entier de vos ouvrages qu'on doit reconnaître que vous avez medité les livres de droit, et non dans les citations qu'il est facile d'accumuler souvent avec plus de patience que de savoir.*

Mr. Maconochie, a member of the Scotch bar, observes, "that it is too generally the case now for a practising lawyer to refer to preceding recorded cases instead of, as during the last century, going up to first principles. He does not get up now the length of first principles, because the multitude of decided cases to which he can refer is daily increasing. The effect of this is to make the profession one of technicalities, to be acquired by the exercise of the power of memory rather than a philosophy to be acquired by the development of the reasoning powers."

The Chief Remembrancer of the Court of Exchequer in Ireland observes, in his valuable and practical evidence upon this subject, that "A young

man who obtains a good elementary knowledge of the philosophy of law will understand better the broad and more important principles on which the profession ought to rest. It will lead him to generalise, and not to be occupied altogether in finding cases out that have a leaning upon the point, without turning his mind to generalise, and to act upon principles instead of precedents.

"The want of that affects, to a very large extent, the practice of the bar itself, and induces them to refer to precedents and technicalities; so much so, that I find men succeeding at the bar every day by assiduity and a good memory in remembering names of cases, and being able to put them forward, who are very inferior, in my mind, in point of ability, to other men who do not get on so well. The habit of learning first the practice, and deducing the principles afterwards from the practice, has very much a tendency to narrow the mind; and I think the course at present is very much to learn the practice before they learn the principles at all; I mean that that is the general system of education."

Reports in law and equity are multiplying so rapidly, that to keep pace with them is beyond the effort of the best memoria technica; and this very increase affords a further argument for substituting the principles of law as a science for the mere committing to memory of cases and precedents as the essential part of legal education. It was asked by a noble and learned lord, in a late debate in the House of Lords upon the consolidation of the criminal law, "Where are those streams—those fountains of justice to be found? Those fountains are contained in thirty-two quarto volumes of statutes, besides three times the number of private acts, filling ~~the~~ all thirty thousand quarto printed pages. The operations of the 'working pure' lie in the decisions of the judges, who have no rules to guide them but such as they can make out by looking partly to the text-books, and partly to their own sense of what is known generally in the profession to be the law, but which has not yet been reduced into shape by text-writers. What is the number of volumes of these decisions? I speak only of the courts of common law. The following statement of the tomes of records of judicial legislation or decision—that mass which has been accumulating, not from the time that Mr. Murray had used the words at the bar which I have cited, not from the time that Lord Mansfield had acceded to the bench in 1756, but from the year 1786, when he left the bench—will be found partly correct. There are one hundred and sixty closely-printed bulky volumes of decisions; to which, if I added the *Nisi Prius* cases, I should make up one hundred and seventy volumes of decisions only of the three courts of common law at Westminster, without reckoning the courts of equity, or the courts of law in Ireland—that is, one hundred and fifty thousand pages of print, with all of which it becomes, and not only becomes, but behoves the judges and practitioners to be familiar. In fact, it is a mass of matter painful to mention, and frightful to contemplate. The expense, it must be obvious, of purchasing such a mass of books must be enormous; in fact, it is an expense which the student at law cannot compass, and which the

practitioner, if he enter on it at all, must defray out of his professional gains. Yet all this mass it becomes, and not becomes only, but behoves the judges to learn and inwardly digest, because they must administer the law, and deliver their decisions, exhibiting an outward knowledge and acquaintance with its contents. Then the books are continually on the increase; in fact, they increase at compound interest. No fewer than fifty-nine learned lawyers are occupied in preparing reports, who send out in the shape of reports every year twelve or fourteen large volumes, which each barrister ought to possess, and each judge be familiar with, but which, continually increasing as the stream, defies any but a large fortune to purchase, any degree of memory to retain, any degree of perspicacity to disentangle." The noble lord might have added, in the words of Lipsius, "*jurisprudentiam multorum camelorum onus esse Amelii vetus querela fuit. Quid nunc dicam? Elefantos ab India adde, vix ferent.*" The great defect in legal education, as it now exists, is the want of system. The student reads in great measure at random, and occupies his time in committing to memory, in an undigested mass, much that he must unlearn as quickly as he can when he enters into the profession.

He reads much that is obsolete without knowing that it is so. Lord Kenyon remarked, half a century since, that in the study of the law a mass lies before the student enough to deter young minds, and they are left to hazard in which road to proceed. He reads unsystematically, and without any definite aim. He attends debating societies, not under the control of an experienced member of the profession, where he learns little but a readiness of expression and self-confidence; and the early practice, a vicious one, of arguing on one side in a science of which he has as yet obtained the merest smattering, is calculated rather to lead him in a retrograde direction in respect of real learning, or of a knowledge of principles.

These evils would be in a great degree met by his being obliged to attend lectures delivered, and examinations presided over, by those who, by practice in their profession, could experimentally apply and develop the principles of legal science. But to make lectures effectual, not only must a systematic course of reading, to be pointed out by the lecturer, be combined with them, but oral and written examination on the subject of each lecture is essential to make such course of instruction effectual to any considerable degree. The habit of attending a lecture, merely to write down its contents, is worse than useless. It tends to superficial knowledge. To be profound, to be practical, to combine practice with theory, the art with the science of law, a regular course of study, bearing upon the lectures that are delivered, and an earnest and hearty oral examination of the student from day to day, and the sympathy of the lecturer, and a kind and anxious spirit upon his part to encourage and assist the student, and create in him a moral as well as intellectual interest in that which is to engross him in after years, are all essential. It is thus, and only thus, that the profession of the law will become what it now is not—a science—in the highest sense of that term, and men will then enter upon the various walks of the

profession with a spirit and an earnestness, and a tone, both moral and intellectual, which will tend to realise the language with which the genius of past ages—Hooker, Lord Bolingbroke, Sir William Jones, and others—so eloquently delineate the ideal of law.

To accomplish this, there must be no exclusive study of one branch of the profession, which tends to narrow the mind, and prevent its ever fully grasping the spirit of the science.

It was remarked by Lord Eldon, after long observation and experience, that the great defect in his day of the Chancery bar was "its ignorance of common law, and of common law practice; and strange as it should seem, yet almost without exception gentlemen go to a bar where they are to modify, qualify, and soften the rigour of the common law, with very little notion of its doctrine or practice."

Summary of Decisions.

CONVEYANCING AND EQUITY.

ANNUITY.—*Charged on personalty—Arrears of—Statute of Limitations.* By the 3 & 4 W. 4, c. 27, s. 42, it is provided that no arrears of interest in respect of any legacy shall be recovered, but within six years after the same shall have become due. It has been decided that an annuity which is bequeathed payable out of the personal estate of a testator does not come within the provisions of the 42nd section of the 3 & 4 Will. 4, c. 27, and, therefore, arrears of such an annuity, after thirty-seven years of inadequate payments of it, ordered to be paid; the residuary personal estate being still undistributed. *Re Ashwell's Will*, 33 Law Tim. Rep. 300.

DEVISE.—*Issue—Failure of issue at the time of death*—1 Vic. c. 26, s. 29 —*Remoteness—Construction.*—The 29th section of the Wills Act (1 Vic. c. 26) enacts, that in any devise of real or personal estate, the words "die without issue" shall be construed to mean a failure of issue at the time of the death, and not an indefinite failure of issue, with certain exceptions, one of which is the following: "Unless a contrary intention shall appear by the will by reason of a proceeding gift being without any implication arising from such words, a limitation of an estate tail to such person," &c. The above provision was much considered in the following case, where a testator by the same clause bequeathed realty and personalty to his brother A. and B. or the heirs of their bodies lawfully begotten, and if either brother should die, leaving lawfully begotten issue, then he directed that a share of such brother should descend to such lawfully begotten heir; but if one brother should die without lawful issue, he directed the whole annual income to be paid to the surviving brother, or in case of his death, also to his lawfully begotten heirs; but in case either brother should die without lawful issue, then the whole property to be divided equally amongst testator's nearest kin. It was admitted that A. and B. took estates tail in

the realty, but it was contended, on behalf of A. and B., that the gift of personalty to the nearest of kin was too remote, as depending on an indefinite failure of issue: Held, that the case was within the rule contained in the 29th section of the Wills Act, and that the words "die without issue" shall be construed to mean a failure of issue at the time of the death, and was not within the exceptions to that rule contained in the same clause, consequently that the gift over to the next of kin was not void for remoteness: Held, on the wording of the will, and the authorities applicable to such wording, that no previous intention was to be gathered from the testator's language contrary to the above restricted construction. *Greenway v. Greenway*, 33 Law Tim. Rep. 342.

DEVISE. — *Occupation—Personal occupation not requisite.*—A testator desired that his two sons might have the use and occupation of certain lands, they paying a stated rent, and that in default of payment, or if they converted the arable land into tillage, they should no longer have possession thereof: Held, affirming the decision of the Master of the Rolls, that the personal use and occupation was not necessary, and that they might under-let the property. *Rabbeth v. Squire*, 28 Law Journ. Ch. 565.

ESTATE TAIL.—*Protector of the settlement—Fines and Recoveries Act—Extent of trust.*—Bare trustees, who, under the 31st section of the Fines and Recoveries Act, 3 & 4 W. 4, c. 74, are protectors of a settlement, can insist on retaining the legal estate only so long as the purposes of the trust exist—that is so long as, according to the rules of courts of equity, they are required to be trustees. The section was intended to meet the case of a settlement where there are contingent remainders, which it was intended the trustees were to protect. In the following case it appeared, that A. devised lands to trustees upon trust for testator's daughter for life, for her separate use without power of anticipation, with remainder to the use of her children as tenants in common in tail, remainder to the use of another daughter in similar form, with remainders over to nephews and nieces: Held, that the first daughter, having become a widow and sui juris, could compel a conveyance of the legal estate by the trustees of the will. *Buttanshaw v. Martin*, 33 Law Tim. Rep. 300.

LEGACY.—*Cumulative or substitutional.*—A legacy given to be paid out of pure personalty by a codicil to a will, and another to the same party by a second codicil generally, without indicating the fund from which payable: Held, to be cumulative, but the second legacy not payable out of the pure personalty. *Johnson v. Earl of Harrowby*, 33 Law Tim. Rep. 344.

MORTGAGE.—*Tacking—Notice—Trustee.*—It has been long established, that where there is a mortgage to a first, second, and third mortgagee, and all of them take without notice of the securities of the others at the time of advancing the money, if the third mortgagee can manage to obtain the estate of the first mortgagee, he can squeeze out the second mortgagee, so that the first mortgagee, should both the subsequent incumbrancers desire to redeem him, can give a preference to whom he pleases. It has been held in every case down to *Peacock v. Burt* (4 L. J. Ch. 73), which is

probably one of the most striking cases of the kind, that a person advancing his money without notice stands in an equally good position in every respect with the other incumbrancers, except as to time; and having afterwards got in the legal estate, he has a right to avail himself of that legal estate, there being no equity to deprive him of it until the whole of the incumbrances have been paid off. In *Peacock v. Burt* (supra), the first mortgagee had notice of the second mortgage; then he made further advances; and then, though with notice of the intervening mortgage, transferred his mortgage and conveyed his legal estate to the third mortgagee, without informing him of the intervening incumbrance. It was there held, that the third mortgagee was entitled to hold the legal estate discharged of the intervening mortgage, of which the first mortgagee had notice when he transferred the legal estate. In the following case it was held, that a mortgagee of an equity of redemption, without notice of prior equitable charges, is entitled, even after a foreclosure bill filed by the intervening incumbrancer, to get in the legal estate and tack his mortgage. T. E. B., by ante-nuptial settlement, covenanted to convey certain freehold hereditaments of which he was seised in fee to trustees upon trust, for the benefit of himself and his wife and the children of the marriage. No conveyance was ever made, and T. E. B. afterwards, in fraud of the settlement, executed a mortgage of the premises, and subsequently mortgaged the equity of redemption, none of the mortgagees having notice of the trusts of the settlement. The first mortgagee having afterwards received notice of the trusts of the settlement, it was held, that notwithstanding such notice, he was at liberty to transfer the legal estate to any person who would pay off his incumbrance, being in a different position from a dry trustee or a satisfied mortgagee. *Bates v. Johnson*, 28 Law Journ. Ch. 509.

SHIPPING.—*Merchant Shipping Act, 1854*—*Invalid bill of sale*—*Registration*—*Equitable interest*.—The registration of a bill of sale of a ship does not confer an absolute title at law, unless the bill of sale itself not only appears to be, but is actually valid. Where a valid title has been acquired at law, *quære*, whether a court of equity has jurisdiction to deal with equitable interests. *Orr v. Dickinson*, 28 Law Journ. Ch. 516.

WILL.—*Accumulation*—*Remoteness*—*Limitation amounting to estate tail in freeholds gives the absolute interest in personality*.—The rule with respect to legacies, as stated in *Roper* (cxxii.), is, that if personal estate be given by a will to A. and the heirs of his body, as such words would create an express estate in tail in freehold lands, so, in personal estate, they would vest the absolute interest, and the remainder and subsequent limitation depending on the failure of them will be of no effect. It was, however, contended in the following case that this was not an inflexible rule, but was adopted to prevent the intention of the testator from being defeated, and that where the existence of this absolute interest would have the effect of defeating the testator's intention, it could not be allowed to take effect, and *Ex parte Wynch* (23 L. J. Ch. 930) was cited. There a bequest was to a

married woman of an annuity for her life and the issue of her body, lawfully begotten; on failure of which, to revert to her heirs, with a request that B. and C. would act as trustees for her, so that the annuity might be secured for her sole benefit. This was held to be a life interest only, with a gift to the issue by way of remainder. There, the words were "issue lawfully begotten," which were, as Lord Cranworth observed, in that case, much more flexible than the words "heirs male." The applicant also attempted to show that the words "heirs of the body," in order to effectuate the intention of the testator, had been, with reference to personal property, treated as words of purchase; and to support this argument, *Hodgeson v. Bussey* (2 Atk. 89), and *Sands v. Dixwell* (2 Ves. 652), were cited. It appeared that a testator, being possessed of leasehold estates, he created a term of thirty years, which he vested in trustees to pay debts and to accumulate rents until the legacies were paid, and then to permit his son Benjamin to take the rents, "until the son of my son Benjamin (if he shall have a son) shall attain twenty-one, "when this son of Benjamin was to take the rents for life, and after his decease to the heirs male of such son and the heirs male of their bodies." There were exactly similar provisions (in default of Benjamin having children) as to the next son, Lewis, and on failure of Lewis and his sons, then to the son of testator's daughter Abigail. Benjamin and Lewis entered successively into possession of the rents and died without issue. Abigail had a son, who attained twenty-one: Held, that the devise over was not void for remoteness, but that the rule as to freeholds applied in this case to leaseholds, and as in freeholds, Abigail's son would have taken an estate tail, so here he took an absolute interest. Also, that as the only legacy in the will was to be paid to a person in being at the time of the testator's death, on her attaining twenty-one, the direction to accumulate was not void. *Gwenllian Williams v. Margaret Lewis and Others*, 28 Law Journ. Ch. 505.

EQUITY PRACTICE.

COSTS.—*Abandoned motion—Time for moving.*—After a bill has been dismissed with costs, it is too late for the defendants to apply for the costs of an abandoned motion with which they were served more than a year before the hearing, and *semble*, such an application would have been too late if made at the hearing. *Eccles v. The Liverpool Borough Bank*, 7 Week. Rep. 666.

DISMISSAL.—*Plaintiff becoming insolvent—Costs.*—When a plaintiff becomes insolvent, and a vesting order is made by the insolvent court, the Court of Chancery will, on a provisional assignee expressing his desire to prosecute the suit, make an order that he do bring himself before the court within a time limited in the order, or that the bill be dismissed without costs. *Meiklam v. Elmore*, 28 Law Journ. Ch. 515.

ENROLMENT OF DECREE.—*Vacating enrolment—Caveat—Notice of presentation of docket.*—A defendant entered a caveat against enrolment of a decree on the 22nd of December. On the 2nd of March he obtained an

order to set down the appeal, and served the order on the 23rd of April. On the 29th of March notice was given that the docket for enrolment would be presented for the Lord Chancellor's signature, unless the appeal were lodged, and an order for setting down the same, served within twenty-eight days. The appeal was set down on the 29th of April, after the expiration of twenty-eight days, and the enrolment was signed on the following day: Held, that although to prosecute the caveat with effect, according to the 4th Order of August, 1852, the appeal ought to have been set down, and notice of it served within the twenty-eight days, yet, as the defendant appeared to have been misled, the enrolment was vacated on the ground of indulgence. *Pearce v. Lindsay*, 28 Law Journ. Ch. 513.

INJUNCTION.—*Bill of discovery*—*Sufficient answer put in.*—A plaintiff, who filed a bill against parties abroad, and on an affidavit of merits obtained an injunction to stay proceedings at law, cannot, upon a sufficient answer being put in, retain the injunction upon inferences to be drawn from a previous evasive answer, and the proceedings taken upon the exceptions; and though it was suggested that the bill had been amended and filed, the injunction was dissolved. *Mollett v. Enequist*, 28 Law Journ. Ch. 507.

INTERPLEADER.—*Landlord and tenant.*—A tenant is not entitled to maintain a bill of interpleader against his landlord except where by some act of the landlord, subsequent to granting the lease, a difficulty has been occasioned by a demand made against the tenant under that subsequent dealing. The legal title to lands in settlements was outstanding in mortgagees. By an indenture of demise, to which the mortgagees and one of the defendants, a cestui que trust, were parties, the mortgagees, by the direction and with the consent of the cestui que trust, demised, and the cestui que trust, under a power, appointed the said lands for a term of years to the plaintiff. The demise gave the plaintiff notice of, but did not recite the settlement. The trustee of the settlement, the other defendant, gave notice to the plaintiff not to pay the rent to any one but himself; afterwards, the cestui que trust sent him notice not to pay rent to the trustee. Upon the cestui que trust bringing an action for rent, the plaintiff moved that the two defendants might interplead. Motion refused. *Cook v. The Earl of Rosslyn*, 33 Law Tim. Rep. 326.

PARTIES TO SUITS.—*Accounts*—*General administration*—*No legal personal representative in England*—*Chancery Amendment Act*, 15 & 16 V. c. 86, s. 44—*Administration ad litem.*—Where a bill was filed by a vendor against the executors in Scotland, who were also the residuary legatees of the purchaser, to set aside a sale of shares, and for an account of profits received in the meantime by the purchaser and the defendants, and payment of any excess over the amount of the purchase money and interest thereon at £4 per cent., there being no representative of the testator appointed in the English Court: Held, that the suit could not proceed in the absence of a representative of the testator in England, and that this was not a case in which the court would appoint a person to act as representative under the Chancery Amendment Act, s. 44. But upon amendment of the bill, making

an administrator ad litem to the testator in England a defendant, and treating the claim as a specific lien on the shares of the testator, and alleging the receipt by the defendants, the executors and residuary legatees, of assets more than sufficient to answer all claims against the testator, and praying that they might be declared personally liable to pay what on taking the accounts might be found due to the plaintiffs: Held, that this was sufficient to enable the court to set aside the sale, and also to direct the account asked and payment personally by the defendants. *Maclean v. Dawson*, 33 Law Tim. Rep. 312.

REVIVOR.—*Order of revivor and supplement*—Statute 15 & 16 V. c. 86, s. 52.—The sole plaintiff in a suit to restrain waste died after decree, having devised all his real estate to his son; the court, upon the exparte application of the devisee, made the usual supplemental order under the 52nd section of the statute 15 & 16 V. c. 86. *Jackson v. Ward*, 28 Law Journ. Ch. 515.

RECEIVER.—*Receiver's account—Fees.*—In the case of a receiver who was managing a business under the direction of the court, a special order was made, that, instead of the further fee payable under the order of the 30th of January, 1857, in respect of his gross receipts, the fee should be payable in respect of the net profits, and a sum previously paid in respect of gross receipts was directed to be allowed in the payment of subsequent fees. *Buckmaster v. Buckmaster*, 28 Law Journ. Ch. 564.

COMMON LAW.

ATTORNEY'S BILL.—6 & 7 V. c. 73, s. 33—*Delivery to one of several joint contractors—Promoters of a joint stock company.*—Under the statute 6 & 7 V. c. 73, s. 33, which requires an attorney's bill to be delivered or sent by post to the party to be charged therewith, it is sufficient to deliver it to one of several joint contractors. The defendants were jointly sued on an attorney's bill as the promoters of a joint stock company. The bill was headed "The promoters of the L. C. M. Co.," and was sent by post to one of the defendants: Held, that if there was evidence of a joint employment of the attorney, there was a sufficient delivery of the bill to all the defendants. *Mant v. Smith*, 28 Law Journ. Rep. Ex. 234.

ESTOPPEL.—*Distinction where some estate passes and where none passes—Nil habuit in tenementis.*—The following propositions may be laid down as to the doctrines of estoppels:—First, if any estate or interest passes from the lessor, or the legal title is shown upon the face of a lease, there is no estoppel at all. Secondly, if the lessor have no title, and the lessee be evicted by him who has, the lessee can defeat him and establish a defence to any action brought against him. Thirdly, so long as the lessee continues in possession under the lease, the law will not permit him to set up any defence founded upon the fact that the lessor nil habuit in tenementis and that upon the execution of the lease he has created in contemplation of law a reversion in fee simple by estoppel in the lessor, which passes by descent to his heir and by purchase to an assignee or devisee. *Cuthbertson v. Irving*, 33 Law Tim. Rep. 328.

FALSE REPRESENTATION.—*Prospectus of company—Action against director.*—An action for false representation (contained in the prospectus of a company of which defendant is director) is maintainable, although such representation may be capable of a meaning in which it would not be literally false. In such a case, it is for the jury to say whether the representation was made in the sense necessary to maintain the action. In order to maintain such action, it is not necessary that there should have been any direct personal representation made by the defendant to the plaintiff; it is sufficient if the defendant authorised the circulation of the prospectus to the public, knowing it to contain false statements. The fact that other inducements were held out by other parties in addition to such false representations, by which the plaintiff was only partially influenced, is in itself no defence. *Clarke v. Dickson*, 28 Law Journ. C. P. 225.

FIXTURES.—*Chattel annexed to the soil—Evidence.*—The mere annexation of a chattel by its owner to the freehold of another does not necessarily make it the property of the freeholder; but in each case it may be a question on the evidence whether the owner of a chattel has lost his property in it. *Lancaster v. Eve*, 28 Law Journ. C. P. 258.

LANDLORD AND TENANT. — *Distraint for rent—Selling after tender of rent and expenses—Impounding*—2 W. & M. s. 1, c. 5, s. 2—11 G. 2, c. 19.—The following is an important decision on the subject of distresses, and overrules the case of *Ellis v. Taylor* (8 M. & W. 415). At common law, a tender after the impounding availed nothing, either in the case of distress for rent or for damage feasant, and the question arises on the equity of the statute 2 W. & M. s. 1. c. 5, s. 2, in cases where a distress has been made for rent. That statute is intitled "An Act for enabling the sale of goods distrained for rent, in case the rent be not paid in a reasonable time." It recites, that the most ordinary and ready way for the recovery of the arrears of rent is by distress; yet such distress not being to be sold, but only detained as pledge for enforcing the payment of such rent, the persons detaining having little benefit thereby; and then it enacts, where the tenant or owner of the goods shall not, within five days, replevy the same, the person detaining shall and may, after the expiration of five days, sell the same. In the case of *Ellis v. Taylor* (8 M. & W. 415), the court held, that, according to the authority of the previous cases, a tender after impounding a distress for rent was too late; the two cases were *Thomas v. Harries* (1 M. & G. 695), in which *Maule, J.*, differed from the other judges and *Ladd v. Thomas* (12 Ad. & El. 17). In the following case it was decided that upon the equity of the stat. 1 W. & M. stat. 1, c. 5, s. 2, an action is maintainable for selling goods distrained for rent in a case where a tender of the rent and expenses was made before the sale and within the five days of the seizure allowed by the statute, although after the goods were impounded. *Johnson v. Upham*, 83 Law Tim. Rep. 327.

LEASE.—*Assignment—Assignee without reversion—Suing for rent—Easement—Eviction.*—W., a termor, in consideration of the rents, covenants, &c., on the defendant's part, "so far as he lawfully could and might," demised

to the defendant for a term ending 25th of March, 185—, and subsequently assigned all his right, interest, demand, &c., in respect of the demised premises, to the plaintiff. It appeared that the term of W. only extended to the 4th of March in the above year, which was less than purported to have been demised to the defendant: Held, nevertheless, that the plaintiff, the assignee of W., was entitled to sue the defendant in his own name for the arrears of rent accruing due since the assignment. Where there is a demise of land, &c., with an easement (*e. g.*, liberty to use a certain railroad), an eviction from the enjoyment of the easement does not prevent the lessor from suing for his rent. *Williams v. Hayward*, 33 Law Tim. Rep. 344.

MORTGAGE.—*Action of covenant by the assignee of the reversion against the lessee for non-repair*—Assignee of a lessor on a lease by deed, who has no estate in the land, has a reversion by estoppel as against the lessee [See title "*Estoppel*"].—On the 7th of June, 1844, certain premises were mortgaged. On the 22nd of February, 1848, the mortgagor demised them from the 1st of August, 1848, to the defendant for seven years; the lease contained the covenants declared on. Defendant was then in possession under a previous lease. On the 2nd of February, 1854, the mortgagor conveyed the equity of redemption to the plaintiff. Defendant paid his rent to the mortgagor up to the time when he sold the equity of redemption, afterwards he paid the rent to the plaintiffs, and was treated by them respectively as their tenant. The plaintiff, as such assignee of the reversion, brought an action against the defendant for breach of covenant to repair; defendant pleaded that plaintiff was not the owner of the reversion: Held, first, on demurrer, that although the declaration did not contain the ordinary allegation inserted uniformly in the precedents (and a departure from the accustomed forms is to be deprecated), that the lessor was seised of some estate which by assignment would pass to the defendant as assignee; yet that sufficient appeared upon the declaration to show that the plaintiff claimed to be assignee of an estate in reversion. Secondly, to the objection that the lessor had no legal estate in the premises at the time of the lease, no estate in reversion to assign, and that the plaintiff was not assignee within the meaning of the 32nd Hen. 8, c. 34, and as a deed of assignment would now appear in evidence, there could be no estoppel: Held, that the defendant was estopped from disputing that the lessor was seised of an estate in reversion, and there being apt words in the assignment to convey a legal estate in fee in reversion to the plaintiff, the estoppel continues, notwithstanding the assignment to him shows a want of title. *Cuthbertson v. Irving*, 33 Law Tim. Rep. 328.

WARRANTS OF ATTORNEY.—*Stamp*—Setting aside a judgment signed on an unstamped warrant of attorney.—A judgment signed on an unstamped warrant of attorney is not available against subsequent judgments, and will be set aside on the application of a judgment creditor. The court will not permit the warrant of attorney to be taken off the file, for the purpose of being stamped on payment of the penalty, until the judgment signed on it is first set aside. *Temple v. Nicholson*, 28 Law Journ. Rep. 217.

COMMON LAW PRACTICE.

ATTACHMENT OF DEBT.—*Costs*—*Lien of judgment debtor's attorney.*—If a judgment creditor receives a debt which has been attached from the garnishee, with notice of the lien of the judgment debtor's attorney, he will be liable to repay it to the attorney. *Eisdell v. Cunningham*, 28 Law Journ. Ex. 218.

COSTS.—*Trespass*—*Malicious Trespass Act*—*Payment into court.*—The 43rd section of the Malicious Trespass Act (the 7 & 8 G. 4, c. 30, s. 22), respecting the protection of persons acting in execution of the act, provides that all actions against any person for anything done in pursuance of the act, shall be brought, &c., and that no plaintiff should recover if sufficient amends should have been made before action, or if a sufficient sum should be paid into court, and if a verdict should be given for the plaintiff, the plaintiff should not have costs against the defendant unless the judge before whom the trial should be had certified his approbation of the action. In an action of trespass and false imprisonment for an arrest on a charge under the Malicious Trespass Act (7 & 8 G. 4, c. 30), the defendant having paid £5 into court, and the jury having given a verdict for £15, the judge not having certified: Held, that the defendant was entitled to a suggestion to deprive the plaintiff of costs. *Norwood v. Pett*, 28 Law Journ. Ex. 212.

INTERROGATORIES.—*C. L. P. Act*, 1854, s. 51.—The officer of a banking company, constituted under 7 G. 4, c. 46, can have interrogatories delivered to him under the 51st section of the C. L. P. Act, 1854. *McKeward v. Roll*, 7 Week. Rep. 601.

BANKRUPTCY.

ADJUDICATION, DISPUTED.—*Agency for bankrupt*—*Bankrupt Law Consolidation Act*, 1849, s. 104.—By the 12 & 13 V. c. 106, s. 104, before any notice of an adjudication of bankruptcy shall be given in the *London Gazette*, a duplicate of such adjudication shall be served on the person adjudged bankrupt, personally, or by leaving the same at the usual or last known place of abode of such person, and such person shall be allowed seven days, or such extended time as the court shall think fit, to show cause against the validity of such adjudication. F., having left this country as an emigrant, left a general authority, either verbal or written, to his uncle to arrange and settle his affairs. Shortly after he was adjudged a bankrupt, and his uncle instructed a solicitor to dispute the adjudication. The commissioner refused to hear the solicitor, on the ground that, under the statute, express agency was necessary, and a general agent had no locus standi. But on appeal, the Lords Justices reversed that decision, holding that the words of the section, "such person," could not have been intended to apply only to the bankrupt himself. *Ex parte Frampton*, 33 Law Tim. Rep. 341.

ARRANGEMENT, DEED OF.—*Bankrupt Law Consolidation Act*, 1849, 12 & 13 V. c. 106, s. 224—*Plea of deed.*—To an action on a bill of

exchange, the defendants pleaded a plea of a deed of arrangement under the 224th section of the Bankrupt Law Consolidation Act, 1849, made between the defendants of the first part, certain persons who were appointed inspectors of the second part, the creditors of the defendant of the third part, but which had not been signed by the plaintiff. The deed contained a clause by which each of the creditors, parties to or bound by the deed, covenanted not to sue, impede, or molest the defendants, and also a clause to the effect that if any creditor, "by whom or on whose behalf the deed should have been actually executed," should act contrary to that covenant, the defendants should be absolutely discharged from all claims and demands whatsoever, both at law and in equity, by such creditor: Held, that this last clause did not apply to the plaintiff, as he had not signed the deed, and therefore the plea, which furnished no defence apart from such clause, (which was only one rendering the deed operative as a defence pleadable in bar), was no answer to the action. *Egg v. Cheesbrough*, 28 Law Journ. C. P. 209.

EQUITABLE MORTGAGE.—*Railway shares—Notice to company.*—An equitable mortgage of railway shares recognised in bankruptcy, the company having accepted notice of the deposit given prior to the bankruptcy, and promised that it should be used for the protection of the mortgagee. *Ex parte Riddle*, 38 Law Tim. Rep. 347.

NOT ANSWERING SATISFACTORILY.—*Committed for—When.*—The court is not justified in committing a bankrupt to prison for not answering satisfactorily, unless in the absolute belief that the answers given are false; where the answers given by a bankrupt were of such a nature as to induce the court to think them open to very grave suspicion, but not amounting to an absolute belief that they were false, the court refused to commit him for not answering satisfactorily under sec. 260 of the Bankrupt Act, 1849. *Re Wells*, 38 Law Tim. Rep. 320.

PROOF.—*Right of—Embezzlement.*—A creditor may prove on account of moneys properly paid to the bankrupt on his behalf, and by bankrupt applied to his own purposes, although he had not proceeded criminally against the bankrupt in respect of such embezzlement. *Ex parte Butcher*, 38 Law Tim. Rep. 335.

PUBLIC COMPANY.—*Joint Stock Companies Acts—Winding up—Contributory—Free shares.*—The mere allotment by the directors of shares to B. as a consideration of a secret imparted by him to the company will not exempt B. from being placed upon the list of contributories upon the company being wound up. The proper time to ascertain whether or not such shares are to be regarded as paid up shares is when B. is called upon to contribute. *Brooke's Case*, 38 Law Tim. Rep. 307.

CRIMINAL LAW.

PAUPER.—*Order of removal—Appeal—To what sessions—Entering and respiting.*—Entering and respiting should not be a matter of course; the sessions should, in all cases, exercise its judgment whether the justice of the

case requires that it should be adjourned. An order of a removal was served on the appellants on the 13th September, 1858; they gave the respondents notice of appeal on the 2nd October. By the practice of the sessions ten days notice of appeal was required. The next sessions were held on the 18th October, when the appellants entered and respited their appeal. On the 18th December the appellants served on the respondents a notice of their intention to try the appeal at the quarter sessions to be held on the 4th of January, 1859, and the grounds of appeal: Held, that such notice was good; that the appellants had a right to try at the January sessions, because the October sessions had adjourned the appeal till January, although, in fact, they ought not so to have adjourned it. *Reg. v. Skircoat*, 33 Law Tim. Rep. 300.

POOR-LAWS.—*Appointment of poor law auditor—Power of poor law commissioners to compel appointment—Parish not in union—Population exceeding 20,000—Mandamus—Hobhouse's Act (1 & 2 W. 4, c. 60; 4 & 5 W. 4, c. 76; 7 & 8 V. c. 101; 18 & 19 V. c. 120).*—Under the Poor Law Act (4 & 5 W. 4, c. 76, s. 46), the Poor Law Commissioners have power to compel a parish to appoint an auditor, although such parish is not in a union, and it is not governed by board guardians appointed under that act, and although such parish has adopted and acted upon the provisions of Hobhouse's Act (1 & 2 W. 4, c. 60), and has since the passing of the Metropolis Local Management Act (18 & 19 V. c. 120) appointed auditors under and by virtue of that act. *Reg. on the Prosecution of The Poor Law Board v. The Governors and Directors of the Poor of the Parish of St. James', Westminster*, 33 Law Tim. Rep. 346.

WRIT OF ERROR.—*Fiat of Attorney-General—Quo warranto.*—If, in an information in the nature of a quo warranto, the Attorney-General have granted his fiat that a writ of error may issue, the court will not interfere, the fiat being conclusive. *Reg. v. Clarke*, 7 Week. Rep. 601.

Vendors and Purchasers.

POWER OF SALE TO TRUSTEES.—*Duration—Power continuing over whole property after partial performance of trusts.*—If an estate is given in trust for certain persons as tenants in common in fee, with a general power of sale in the trustees, the power would be invalid, because, if good at all, it must be good in perpetuum. But if the estate is given to trustees upon trust in certain shares for certain persons for life, with remainders over in fee, this power would subsist until the trusts were exhausted and the persons in remainder were entitled to call on the trustee to convey the absolute interest; and the circumstance that a person entitled to one share was in a position to call for a conveyance while the trusts of the other shares still subsisted would not put an end to the power. The question is one of intention which the court will execute if it does not offend against any rule

of law. In *Ward v. Polhill* (11 Ves. 257), where the power^a was unlimited as to its duration, Lord Eldon thought it was void because under the circumstances of that case it might travel through minorities for two centuries. In the following case it appeared that a testator devised real estate to the use of trustees and their heirs on trust as to the three undivided fifths upon trust for certain persons for life, with remainder to their children in fee, and as to the remaining two-fifths, upon trust for two persons in fee. Then followed a trust, that if the trustee should think it desirable to sell the property, then, "as soon as conveniently, after his decease," the trustee should sell the property. The testator died in 1830. After the trusts as to four-fifths of the property were performed, the trustee sold the whole property: Held, that the power was still subsisting as to the whole property, and therefore that a good title could be made. *Tait v. Swinstead*, 33 Law Tim. Rep. 312.

SPECIFIC PERFORMANCE.—*Title, when first shown—Costs—Claim for compensation wholly failing—Requisitions made after bill filed.*—A vendor, defendant to a suit for specific performance by a purchaser, will not be ordered to pay costs:—1. Where requisitions as to title are not made until after bill filed; 2. Nor where the subject-matter of the suit, such as compensation for an alleged misrepresentation in the particulars of sale wholly fails, although a complete title may not have been shown by the vendor until after decree and reference to chambers as to when title first shown. *Lyle v. The Earl of Yarborough*, 33 Law Tim. Rep. 343.

SPECIFIC PERFORMANCE.—*Notice to rescind contract—Return of deposit.*—A purchaser raised certain valid objections to his vendor's title, which the vendor refused to satisfy. The vendor gave notice, that if the purchaser refused to complete within five days, he should resell, and charge the purchaser with the expenses. The purchaser thereupon gave the vendor notice that he should bring an action for the deposit if the requisitions were not complied with within a week. The action was commenced, and the vendor, some time subsequently, agreed to satisfy the requisitions at the purchaser's expense. Upon the purchaser's refusal, a bill was filed by the vendor for specific performance. The court held that the notice by the vendor of an intention to resell was equivalent to a declaration that he would not seek specific performance of the contract, and that the purchaser's action to rescind was effectual, and the bill was dismissed with costs. Power of the court to order the return of the deposit where the vendor's bill is dismissed, he having given an undertaking. *Royou v. Paul*, 28 Law Journ. Ch. 555.

Recent Statutes.

STATUTES OF 22 VICTORIA.

(Continued from pp. 243—248).

CAP. I. ANNIVERSARY DAYS' OBSERVANCE.

This is an act which, after reciting the issue of a royal warrant for the discontinuance of the Forms of Prayer and Service made for the 30th of January, the 29th of May, and the 5th of November, repeals certain acts, and parts of acts, requiring the observance of those days, and also (in Ireland) of the 23rd of October, as anniversary days.

CAP. X. QUAKERS, &c., AFFIRMATION.

This act gives a form of affirmation to be taken by Quakers and others permitted to make an affirmation or solemn declaration, in lieu of the oath given by the 21 & 22 V. c. 48, which substitutes one oath for the oaths of allegiance, supremacy, and abjuration.

22 & 23 VICTORIA.

CAP. I. PRIVY COUNCIL CLERK.

This is an act enabling any person authorised by her Majesty in council to act in the absence of the clerk of the council in ordinary, to sign orders under acts of Parliament, &c.

CAP. III. PUBLIC HEALTH ACT, 1848.

The 21 & 22 V. c. 97, the Public Health Act, 1858, is made perpetual, the 8th section, limiting the time of the operation of the act: being repealed.

CAP. IV. CRIMINAL JUSTICE (MIDDLESEX ASSISTANT JUDGE) ACT.

This act recites that, by the 7 & 8 V. c. 71, "provision is made for the appointment by her Majesty of a person, being a serjeant or barrister-at-law of not less than ten years' standing, and in the commission of the peace for the county of Middlesex, and qualified by law to act as a justice of the peace, to be the assistant judge of the court of the sessions of the peace for the said county, and the yearly salary of £1200 is to be paid as therein mentioned to such assistant judge out of the Consolidated Fund of the United Kingdom: and that the said office of assistant judge lately became vacant by the death of Robert Pashley, Esquire, and it is expedient to make further provision concerning the said office and otherwise to amend the said act."

SEC. 1. *Power to justices of Middlesex to grant £300 a year out of the county rates as an addition to the salary of the assistant judge.*—It shall be lawful for the justices of the county of Middlesex, if they so think fit, at any general or quarter session of the peace to order to be paid out of the county rates of such county, to the assistant judge for the time being, the

yearly sum of £300 in addition to the salary of £1200 payable under the said act, and such yearly sum of £300 shall be paid out of such county rates accordingly on the days on which the said salary of £1200 is payable out of the Consolidated Fund.

SEC. 2. *In such case assistant judge not to practise as a barrister.*—In case such yearly sum of £300 be so ordered to be paid, no such assistant judge during his continuance in such office shall practise as a barrister.

SEC. 3. *In certain cases Secretary of State may appoint a person to act temporarily as assistant judge.*—During any vacancy in the office of such assistant judge, or when and so often as such assistant judge for the time being shall, by reason of mental or bodily infirmity or of unavoidable absence, or from other cause, be unable to appoint a deputy pursuant to the said act, it shall be lawful for one of her Majesty's principal Secretaries of State, by writing under his hand, to appoint a person, being a serjeant or barrister-at-law of not less than ten years' standing, to act temporarily as or in the place of such assistant judge until such time as an assistant judge shall be appointed under the said act, or until the assistant judge shall be able to resume his duties, as the case may require, and such person so appointed under this act shall have and exercise all such powers and privileges as are given by the said act to such assistant judge, and shall be paid for his services out of the county rates of the said county any sum not exceeding five guineas per day whilst he shall sit and act as assistant judge.

SEC. 4. *All general sessions of the peace for Middlesex to have the powers of quarter sessions.*—Every general session of the peace for the county of Middlesex, and every adjournment thereof, shall have power to try and determine all appeals, and all other powers which do now or shall hereafter belong to the general quarter sessions for the said county; and the said justices may and are hereby authorised to hold such sessions or adjournment thereof, at the sessions house at Clerkenwell.

SEC. 5. *Court may remit fines on jurors imposed at a previous session.*—It shall be lawful for any court of general or quarter sessions holden in and for the said county of Middlesex to spare or remit, if it shall be thought fit, any fine imposed at a previous session upon any juror for non-attendance or other default.

SEC. 6. *Section 10 of recited act repealed in part on next vacancy.*—So soon as the present assistant judge shall cease to hold his office as such judge, the tenth section of the said act shall be repealed so far as relates to the salary of any future assistant judge.

CAP. VI. ADMIRALTY COURT ACT.

This act enables serjeants, barristers-at-law, attorneys and solicitors, to practise in the High Court of Admiralty.

SEC. 1. *Serjeants, barristers, attorneys, and solicitors to be at liberty to practise in the High Court of Admiralty.*—All serjeants and barristers-at-law, and all attorneys-at-law and solicitors, shall, from and after the passing of this act, be entitled to practise as serjeants, barristers, attorneys and

solicitors respectively in all matters and causes whatsoever in her Majesty's High Court of Admiralty; and the said serjeants and barristers-at-law shall and may have and exercise the same rights and privileges of practising pleading, and audience in the said High Court of Admiralty as advocates now have and enjoy in the said court, and the said attorneys and solicitors shall and may have and exercise the same rights and privileges of practising in the said High Court of Admiralty as proctors now have and enjoy in the said court; and all persons who at the time of the passing of this act shall have been admitted advocates in any of the ecclesiastical courts or in the said High Court of Admiralty, and the said serjeants and barristers-at-law shall have respectively the same rank and precedence in the said High Court of Admiralty which they now have before the Judicial Committee of the Privy Council, unless and until her Majesty shall otherwise order: provided always, that all attorneys-at-law and solicitors practising in the said Court of Admiralty shall be subject to the authority of the judge of the said court, in like manner as attorneys in the Court of Queen's Bench are subject to the authority of that court.

CAP. XIV. PAWNBROKERS' ACT.

This act extends sections 32—35 of the 2 & 3 V. c. 71 (An Act for Regulating the Police Courts in the Metropolis), to the 39 & 40 G. 3, c. 39 (An Act for Regulating Pawnbroker's Business), and to all parts of England.

CAP. XVII. VEXATIOUS INDICTMENTS.

This act has for its object to prevent, in certain specified cases, indictments being presented to a grand jury, unless after a previous investigation, or by direction of a judge, or the Attorney or Solicitor-General, &c.

SEC. 1. *No indictment for offences herein named to be preferred without previous authorisation—14 & 15 V. c. 100.*—After the 1st day of September, 1859, no bill of indictment for any of the offences following, viz.: perjury, subornation of perjury, conspiracy, obtaining money or other property by false pretences, keeping a gambling house, keeping a disorderly house, and any indecent assault, shall be presented to or found by any grand jury, unless the prosecutor or other person presenting such indictment has been bound by recognisance to prosecute or give evidence against the person accused of such offence, or unless the person accused has been committed to or detained in custody, or has been bound by recognisance to appear to answer to an indictment to be preferred against him for such offence, or unless such indictment for such offence, if charged to have been committed in England, be preferred by the direction or with the consent in writing of a judge of one of the superior courts of law at Westminster, or of her Majesty's Attorney-General or Solicitor-General for England, or unless such indictment for such offence, if charged to have been committed in Ireland, be preferred by the direction or with the consent in writing of a judge of one of the superior courts of law in Dublin, or of her Majesty's

Attorney-General or Solicitor-General for Ireland, or (in the case of an indictment for perjury) by the direction of any court, judge, or public functionary authorised by an act of the session holden in the 14 & 15 Vic. c. 100, to direct a prosecution for perjury.

SEC. 2. *In certain cases where prosecutor desires to prefer an indictment justice to take his recognisance to prosecute.*—That where any charge or complaint shall be made before any one or more of her Majesty's justices of the peace that any person has committed any of the offences aforesaid within the jurisdiction of such justice, and such justice shall refuse to commit or to bail the person charged with such offence to be tried for the same, then in case the prosecutor shall desire to prefer an indictment respecting the said offence, it shall be lawful for the said justice and he is hereby required to take the recognisance of such prosecutor to prosecute the said charge or complaint, and to transmit such recognisance, information, and depositions, if any, to the court in which such indictment ought to be preferred, in the same manner as such justice would have done in case he had committed the person charged to be tried for such offence.

SEC. 3. *Act not to extend to Scotland.*—This act shall not extend to Scotland.

CAP. XVIII. INCOME TAX ACT.

The provisions of this act will be found stated *ante*, p. 270.

CAP. XXI. QUEEN'S REMEMBRANCER, &c., ACT.

This is an act to regulate the office of Queen's Remembrancer, and to amend the practice and procedure on the revenue side of the Court of Exchequer. The following are the provisions of importance:—

SEC. 1. *Appointment of Queen's Remembrancer.*—The said appointment of the said William Henry Walton shall be confirmed, and he may continue to hold the office of her Majesty's Remembrancer during good behaviour, together with the office of master; and upon any vacancy in the said office of remembrancer it shall be lawful for the Commissioners of her Majesty's Treasury to appoint from time to time one of the masters of the Court of Exchequer to be such remembrancer, and such master shall hold such office together with the office of master: provided that, in the absence of the remembrancer from illness or other cause, the senior master for the time being in attendance may perform the duties of the office of remembrancer.

SEC. IX. *Section 222 of 15 & 16 V. c. 76, extended to suits, &c., in Exchequer.*—Section 222 of the "Common Law Procedure Act, 1852," for the amendment of defects and errors in any proceeding in civil causes, and concerning the costs and terms of such amendment, shall extend to all suits and proceedings on the revenue side of the Court of Exchequer.

SEC. X. *Special case may be stated by consent of parties and order of a judge.*—In any suit or proceeding on the revenue side of the Court of Exchequer, the parties may, at any time before judgment, by consent and

order of a judge, state any question or questions of law in a special case for the opinion of the court, without pleadings, and upon judgment thereon error may be brought as on a judgment on a special verdict, unless the parties agree to the contrary, and the proceedings for bringing a special case before the court of error shall, as nearly as may be, be the same as in the case of a special verdict, and the court of error shall either affirm the judgment, or give the same judgment as ought to have been given in the court in which it was originally decided, the said court of error being required to draw any inferences of fact from the facts stated in such special case, which the court below ought to have drawn.

SEC. 11. *Costs to follow event unless otherwise agreed.*—In case no agreement shall be entered into as to the costs of such special case and proceedings, the costs shall follow the event, and be recovered by the successful party.

SEC. 12. *Appeal from assessments of succession duty may be carried to a superior court.*—In cases of appeal from the assessment of the Commissioners of Inland Revenue to the Court of Exchequer, made under the provisions of the Succession Duty Act, 1853, the party decided against may appeal from the decision of the court upon a case to be stated by the parties, or, if they differ, to be settled by the court, or a judge thereof, or any officer to whom the court may think proper to refer the same; and the court of appeal shall give such judgment as ought to have been given by the Court of Exchequer, and shall have power to adjudge the payment of costs.

SEC. 13. *Courts of appeal.*—Such appeal as aforesaid shall be made to the court of error in the Exchequer Chamber, and the decision of the said court of error shall be subject to appeal to the House of Lords.

SEC. 14. *Notice of appeal to be given.*—No such appeal shall be allowed under this act unless notice thereof be given in writing to the opposite party or attorney, and to the proper officer of the court, within four days after the decision complained of, or such further time as may be allowed by the court or judge.

SEC. 15. *In summary proceedings for legacy or succession duty parties may appeal.*—In any proceeding in the Court of Exchequer by writ of summons under the Succession Duty Act, 1853, or by rule under any of the legacy duty acts the court may refer the matter to the proper officer to report thereon, and may, if they deem it expedient, order the facts contained in such report to be stated in the form of a special case for the opinion of the court, and may give such directions as to the mode of settling the case, and the matters to be contained therein, and for the production of such documents, and may direct any issue or issues of fact to be tried by a jury, as they may think proper, and the court may proceed to give judgment on such case, and for any amount of duty the court are of opinion may be due to the Crown, and for costs, in like manner as on a verdict on information, and on such judgment error may be brought and judgment given as on a special case stated by consent.

SEC. 16. Powers of 1 Will. 4, c. 22, &c., as to examination of witnesses, and of sections 46, 47, 48, and 49 of 15 & 16 V. c. 76, extended to revenue proceedings. Persons giving false evidence guilty of perjury. Sec. 17, revenue causes may be tried without a commission, and by secs. 18 and 19, error is to be brought within six years, except in cases of disabilities, and without writ.

SEC. 20. *Bill of exceptions*.—Either party may tender a bill of exceptions on the trial of any issues arising on the revenue side of the court, and the like proceedings may be had and taken thereon as in such cases between subject and subject.

SEC. 21. *Costs*.—The costs of all suits, informations, and other proceedings, and of any interlocutory matter or proceeding on the revenue side of the Court of Exchequer, whether in law or equity, may be adjudged, decreed, or ordered by the court or a judge between the Crown and the subject on the same principles as such costs are now allowed between subject and subject, so far as such principles may be applicable, subject to such rules and orders as to the allowance of such costs as may be made by the barons under this or any other act of Parliament authorising the same; and it shall be lawful for the Commissioners of her Majesty's Treasury, and they are hereby required to pay costs directed to be paid by the Crown out of any moneys which may hereafter be voted by Parliament for that purpose.

SEC. 24. *Provision for the recovery of a debt of record due to her Majesty, where the party liable resides in another jurisdiction*.—For the recovery of any debt which by record in her Majesty's Court of Exchequer in England has become or shall become due to her Majesty, in any case where the person of the debtor, or the estate or effects of such debtor, may be within the jurisdiction of the Court of Exchequer in Scotland or Ireland, a copy of the record of such debt may be exemplified and transmitted, under the great seal of the said Court of Exchequer in England, to such other of her Majesty's said Courts of Exchequer having jurisdiction in the place where the person liable to payment of such debt happens to reside, or where his estate or effects may be, and the court to which such exemplified copy is transmitted shall cause such copy to be forthwith enrolled in the rolls of the said court; and upon the same being so enrolled, the said court shall cause execution or other process to issue for recovering or levying the said debt so due to her Majesty, according to the rules and practice of such court, in like manner in all respects as if such record had been originally entered or filed in such court, or the said debt had originally accrued within the jurisdiction thereof; and the proceeds of such debt, when so recovered, shall be accounted for and paid over in the same manner as if the same had been recovered within the jurisdiction of the court in which such debt originally accrued.

SEC. 25. *The Crown may re-enter on lands to enforce right of re-entry without inquisition taken*.—When a right of re-entry upon lands or other hereditaments shall have accrued to her Majesty or her successors, such

right may be exercised or enforced without any inquisition being taken or office being found, or any actual re-entry being made on the premises.

By sec. 28, the 8th section of the 3 & 4 W. 4, c. 99, requiring sheriff's accounts to be audited by the commissioners of audit, is repealed.

SEC. 29. *Transmission of sheriff's accounts.*—Subject to such other provisions in this behalf as may be made by any such warrant as aforesaid, all sheriffs and under-sheriffs now required to transmit accounts to the commissioners for auditing the public accounts, in manner provided by sec. 9 of the said act of the 3 & 4 Will. 4, shall, in lieu of transmitting the same to such commissioners, transmit the same to the Commissioners of her Majesty's Treasury: and so much of sec. 31 of the said act as requires a copy of the accounts therein-mentioned to be transmitted to the commissioners for auditing public accounts is hereby repealed.

By sec. 32, clerks of assize, who heretofore have been required to estreat fines, &c., into the Exchequer, are to send process to the sheriff, and (s. 34) the writ is to be returned to the Treasury. By s. 35, until the fines, &c., are levied, the sheriff is to retain the writ, which shall continue in force, and be an authority to act upon. By sec. 36, where a party resides in another county, &c., or has removed, the sheriff is to issue his warrant to the sheriff of the other county, &c. By sec. 40, recognisances forfeited at coroner's inquests are to be returned to the Clerks of the Peace, as in the case of fines imposed by coroners. Sec. 42 provides for the mode of signifying in future the approval of the sheriffs of London, and sheriff of Middlesex, and sec. 43 makes provisions as to the rents rendered by the Corporation of London before the Court of Exchequer.

CAP. XXX. COINAGE.

This is an act to extend existing enactments relative to the copper coin to coin of mixed metal made current by the royal proclamation.

CAP. XXXII. POLICE (COUNTIES AND BOROUGH).

This is an act to amend the law concerning the police in counties and boroughs in England and Wales, and it is too long to be here inserted. By sec. 1, the police districts under 3 & 4 V. c. 88, and 19 & 20 V. c. 69, may be consolidated or merged, and by sec. 2, county constables are not to be required to act in any borough. There are other provisions relating to voting, watch-rates, superannuation, gratuities, &c.

CAP. XXXV. LAW OF PROPERTY, &c.

This may be considered as the most important statute of the last session, so far, at least, as the profession is personally concerned, inasmuch as it makes many alterations in the doctrines of the law, with all of which every practising lawyer and student must make himself familiar; otherwise, he will be continually committing mistakes. The author of the act is Lord St. Leonards; but his original bill has been much altered, and has suffered many mutilations, some of his subjects having been entirely excised. At

present, we can do little more than present the act, but, on a future occasion, we shall endeavour to give a full explanation of the various enactments.

The act applies to leases, policies of insurance, rent-charges, judgments, powers, inheritances, assignment of personalty, purchasers, trustees and executors.

Leases—Operation of licences to alien, &c.—Secs. 1 & 2 make a complete change in the law with respect to the operation of licences to alien and of partial licences. According to the law as settled by *Dumpor's case* (4 Co. 119), a condition in a lease not to alien without licence, was put an end to by the first licence granted; a decision at which, says Lord Mansfield, in *Doe v. Bliss* (4 Taunt. 736), "the profession always wondered." It has, nevertheless, not only been ever since recognised and adopted by judges, but the principle on which it is based has been actually extended, so that it came to be held that the condition is gone, not only where the licence to assign was general, but that the same result followed where the licence was to assign to one particular person, even though such assignment was to be subject to the performance of the covenants in the original lease. For the future, any licence to do an act which, without such licence, would create a forfeiture, or give a right to re-enter, shall, unless otherwise expressed, extend only to the permission actually given; and where there is a power or condition of re-entry on assigning or under-letting, and a licence is given to one of several lessees or co-owners to assign or under-let his share or interest, or part only of the property, such licence is not to operate to destroy the lessor's right of re-entry; in case of breach by a co-lessee or co-owner of the other shares, or by the lessee or owner of the rest of the property. Sec. 3 abolishes the rule of law which prevented conditions from being apportioned. According to that rule, a grantee of part of a reversion could not take the benefit of a condition or power of re-entry. Now the assignee of each part of the reversion is, in respect of the apportioned rent, to be entitled to the benefit of all conditions or powers of re-entry.

Policies of insurance—Relief against forfeitures—Breach previous to purchase—Informal insurance.—Secs. 4 to 9 relate to policies of insurance, and enable courts of equity, in certain cases, to relieve against a forfeiture caused by the breach of a covenant or condition to insure. It is to be observed, however, that the court has such power only, 1st. Where no loss or damage has happened. 2nd. Where it considers that the breach was committed through accident or mistake, or without fraud or gross negligence. 3rd. Where there is a proper insurance on foot at the time of the application; and 4th. It cannot relieve the same person more than once in respect of the same covenant or condition. Sec. 8. contains an enactment of great value to a purchaser of leaseholds, under which, if he has the receipt of the person entitled to receive the rent, for the last payment accrued due before the completion of the purchase; and if there is then subsisting a proper insurance, the purchaser will not be liable for the consequences of any

previous breach of which he had no notice. There may be a doubt, perhaps, whether actual notice is here meant. If it is, there will still be some danger in a case where the court may consider that the purchaser was put upon inquiry whether a breach had occurred or not, and where he omitted to make such inquiry. By sec. 7, the lessor is to be entitled to the benefit of any informal insurance.

Rent-charges and judgments (ss. 10, 11)—*Release of part*.—It was well established that the whole of a rent-charge was extinguished where part of the hereditaments charged were released therefrom. Henceforth, by sec. 10, such a release will operate only to bar the right to recover any part of the rent-charge out of the hereditaments released, without prejudice to the rights of all persons interested in the hereditaments remaining unreleased. And sec. 11 makes a like provision as to the release from a judgment of part of any hereditaments charged therewith.

Powers—Mode of execution—Mistaken payment to tenant for life—Charges may be raised by mortgage or sale (ss. 12—18).—An appointment under a power, if executed in the presence of and attested by two witnesses in the form in which deeds are ordinarily executed will suffice, though the power requires other formalities. A sale under a power is not to be avoided by reason of a mistaken payment to a tenant for life, &c., of the value of timber, &c. A devisee in trust may raise money by a sale or mortgage, notwithstanding there be no express power so to do in the will, and if there be no sufficient devise, the executors may so raise the money. These provisions are not to extend to beneficial devisees (ss. 12—18).

Inheritance—Failure of heirs of purchaser.—By ss. 19 & 20, if there be a total failure of heirs of the purchaser, &c., the descent is to be traced from the person last entitled to the land.

Assignment of personalty.—Sec. 21 authorises, or rather recognises, as we have before shown, an assignment of personalty and leaseholds by a person to himself and another.

Purchasers—Re-registry of Crown debts—Receipt for moneys—Fraudulent concealment of goods (ss. 22—25).—Crown debts (s. 22) are to be re-registered like judgments. By s. 23, a purchaser is not to be bound to see to the application of his purchase money. Sec. 24 provides for the punishment of any vendor, his solicitor, &c., for fraudulent concealment of deeds, &c., or falsifying a pedigree.

Trustees and executors—Payments under powers—Liability as to rents, covenants, &c. in leases, and conveyances on rent-charge—Trustees and executors applying to judge for opinion, &c.—Clauses of indemnity, and reimbursement of trustees—Investments (ss. 26—32).—A trustee, executor, or administrator making any payment under a power of attorney, is not to be liable by reason of the death of the party giving such power. This provision is thus very limited in its extent. Secs. 27 & 28 provide as to the liability of executors and administrators in respect of rents, covenants, and agreements contained in leases, or agreements for a lease, and also in conveyances on chief rent or rent-charge, or agreements for such a conveyance.

By s. 30, trustees, executors, and administrators may apply by petition or summons to an equity judge for his opinion, advice, &c., in the management &c., of the trust property, and be thus indemnified. By s. 31, every trust instrument is to be deemed to contain clauses for the indemnity and reimbursement of the trustees, in the form in the act mentioned. By s. 32, a trustee, executor, or administrator may invest in Bank or East India Stock, if not forbidden. The act does not (s. 33) extend to Scotland.

LEASES.

SEC. 1. *Restriction on effect of licence to alien.*—Where any licence to do any act which without such licence would create a forfeiture or give a right to re-enter, under a condition or power reserved in any lease heretofore granted or to be hereafter granted, shall at any time after the passing of this act be given to any lessee or his assigns, every such licence shall, unless otherwise expressed, extend only to the permission actually given, or to any specific breach of any proviso or covenant made or to be made, or to the actual assignment, under-lease, or other matter thereby specifically authorised to be done, but not so as to prevent any proceeding for any subsequent breach (unless otherwise specified in such licence); and all rights under covenants and powers of forfeiture and re-entry in the lease contained shall remain in full force and virtue, and shall be available as against any subsequent breach of covenant or condition, assignment, under-lease, or other matter not specifically authorised or made dispensable by such licence, in the same manner as if no such licence had been given; and the condition or right of re-entry shall be and remain in all respects as if such licence had not been given, except in respect of the particular matter authorised to be done.

SEC. 2. *Restricted operation of partial licences.*—Where in any lease heretofore granted or to be hereafter granted there is or shall be a power or condition of re-entry on assigning or underletting or doing any other specified act without licence, and a licence at any time after the passing of this act shall be given to one of several lessees or co-owners to assign or underlet his share or interest, or to do any other act prohibited to be done without licence, or shall be given to any lessee or owner, or any one of several lessees or owners, to assign or underlet part only of the property, or to do any other such act as aforesaid in respect of part only of such property, such licence shall not operate to destroy or extinguish the right of re-entry in case of any breach of the covenant or condition by the co-lessee or co-lessees, or owner or owners, of the other shares or interests in the property, or by the lessee or owner of the rest of the property (as the case may be) over or in respect of such shares or interests or remaining property, but such right of re-entry shall remain in full force over or in respect of the shares or interests or property not the subject of such licence.

SEC. 3. *Apportionment of conditions of re-entry in certain cases.*—Where the reversion upon a lease is severed, and the rent or other reservation is legally apportioned, the assignee of each part of the reversion shall, in

respect of the apportioned rent or other reservation allotted or belonging to him, have and be entitled to the benefit of all conditions or powers of re-entry for nonpayment of the original rent or other reservation, in like manner as if such conditions or powers had been reserved to him as incident to his part of the reversion in respect of the apportioned rent or other reservation allotted or belonging to him.

POLICIES OF INSURANCE.

SEC. 4. *Relief against forfeiture for breach of covenant to insure in certain cases.*—A court of equity shall have power to relieve against a forfeiture for breach of a covenant or condition to insure against loss or damage by fire, where no loss or damage by fire has happened, and the breach has, in the opinion of the court, been committed through accident or mistake, or otherwise, without fraud or gross negligence, and there is an insurance on foot at the time of the application to the court in conformity with the covenant to insure, upon such terms as to the court may seem fit.

SEC. 5. *When relief granted the same to be recorded.*—The court, where relief shall be granted, shall direct a record of such relief having been granted to be made by indorsement on the lease or otherwise.

SEC. 6. *Court not to relieve any person more than once in respect of the same covenant, &c.*—The court shall not have power under this act to relieve the same person more than once in respect of the same covenant or condition; nor shall it have power to grant any relief under this act where a forfeiture under the covenant in respect of which relief is sought shall have been already waived out of court in favour of the person seeking the relief.

SEC. 7. *Lessor to have benefit of an informal insurance.*—The person entitled to the benefit of a covenant on the part of a lessee or mortgagor to insure against loss or damage by fire shall, on loss or damage by fire happening, have the same advantage from any then subsisting insurance relating to the building covenanted to be insured, effected by the lessee or mortgagor in respect of his interest under the lease or in the property, or by any person claiming under him, but not effected in conformity with the covenant, as he would have from an insurance effected in conformity with the covenant.

SEC. 8. *Protection of purchaser against forfeiture under covenant for insurance against fire in certain cases.*—Where, on the bona fide purchase after the passing of this act of a leasehold interest under a lease containing a covenant on the part of the lessee to insure against loss or damage by fire, the purchaser is furnished with the written receipt of the person entitled to receive the rent, or his agent, for the last payment of rent accrued due before the completion of the purchase, and there is subsisting at the time of the completion of the purchase an insurance in conformity with the covenant, the purchaser or any person claiming under him shall not be subject to any liability, by way of forfeiture or damages or otherwise, in respect of any breach of the covenant committed at any time before the

completion of the purchase of which the purchaser had not notice before the completion of the purchase; but this provision is not to take away any remedy which the lessor or his legal representatives may have against the lessee or his legal representatives for breach of covenant.

SEC. 9. *Preceding provisions to apply to leases for a term of years absolute, &c.*—The preceding provisions shall be applicable to leases for a term of years absolute, or determinable on a life or lives or otherwise, and also to a lease for the life of the lessee or the life or lives of any other person or persons.

RENTCHARGES.

SEC. 10. *Release of part of land charged not to be an extinguishment.*—The release from a rentcharge of part of the hereditaments charged therewith shall not extinguish the whole rentcharge, but shall operate only to bar the right to recover any part of the rentcharge out of the hereditaments released, without prejudice nevertheless to the rights of all persons interested in the hereditaments remaining unreleased, and not concurring in or confirming the release.

JUDGMENTS.

SEC. 11. *Release of part of land charged not to affect judgment.*—The release from a judgment of part of any hereditaments charged therewith shall not affect the validity of the judgment as to the hereditaments remaining unreleased, or as to any other property not specifically released, without prejudice nevertheless to the rights of all persons interested in the hereditaments or property remaining unreleased, and not concurring in or confirming the release.

POWERS.

SEC. 12. *Mode of execution of powers.*—A deed hereafter executed in the presence of and attested by two or more witnesses in the manner in which deeds are ordinarily executed and attested shall, so far as respects the execution and attestation thereof, be a valid execution of a power of appointment by deed or by any instrument in writing not testamentary, notwithstanding it shall have been expressly required that a deed or instrument in writing made in exercise of such power should be executed or attested with some additional or other form of execution or attestation or solemnity: provided always, that this provision shall not operate to defeat any direction in the instrument creating the power that the consent of any particular person shall be necessary to a valid execution, or that any act shall be performed in order to give validity to any appointment, having no relation to the mode of executing and attesting the instrument, and nothing herein contained shall prevent the donee of a power from executing it conformably to the power by writing or otherwise than by an instrument executed and attested as an ordinary deed, and to any such execution of a power this provision shall not extend.

SEC. 13. *Sale under power not to be avoided by reason of mistaken payment to tenant for life.*—Where, under a power of sale, a bona fide sale shall be

made of an estate with the timber thereon, or a other articles attached thereto, and the tenant for life or any other party to the transaction shall by mistake be allowed to receive for his own benefit a portion of the purchase money as the value of the timber or other articles, it shall be lawful for the Court of Chancery, upon any bill or claim or application in a summary way, as the case may require or permit, to declare that upon payment by the purchaser, or the claimant under him, of the full value of the timber and articles at the time of sale, with such interest thereon as the court shall direct, and the settlement of the said principal moneys and interest under the direction of the court upon such parties as in the opinion of the court shall be entitled thereto, the said sale ought to be established; and upon such payment and settlement being made accordingly the court may declare that the said sale is valid, and thereupon the legal estate shall vest and go in like manner as if the power had been duly executed, and the costs of the said application as between solicitor and client shall be paid by the purchaser or the claimant under him.

SEC. 14. *Devisee in trust may raise money by sale, notwithstanding want of express power in the will.*—Where by any will which shall come into operation after the passing of this act the testator shall have charged his real estate or any specific portion thereof with the payment of his debts, or with the payment of any legacy or other specific sum of money, and shall have devised the estate so charged to any trustee or trustees for the whole of his estate or interest therein, and shall not have made any express provision for the raising of such debt, legacy, or sum of money out of such estate, it shall be lawful for the said devisee or devisees in trust, notwithstanding any trusts actually declared by the testator, to raise such debts, legacy, or money as aforesaid, by a sale and absolute disposition by public auction or private contract of the said hereditaments, or any part thereof, or by a mortgage of the same, or partly in one mode and partly in the other, and any deed or deeds of mortgage so executed may reserve such rate of interest and fix such period or periods of repayment as the person or persons executing the same shall think proper.

SEC. 15. *Powers given by last section extended to survivors, devisees, &c.*—The powers conferred by the last section shall extend to all and every person or persons in whom the estate devised shall for the time being be vested by survivorship, descent, or devise, or to any person or persons who may be appointed under any power in the will, or by the Court of Chancery, to succeed to the trusteeship vested in such devisee or devisees in trust as aforesaid.

SEC. 16. *Executors to have power of raising money, &c., where there is no sufficient devise.*—If any testator who shall have created such a charge as is described in the fourteenth section shall not have devised the hereditaments charged as aforesaid in such terms as that his whole estate and interest therein shall become vested in any trustee or trustees, the executor or executors for the time being named in such will (if any) shall have the same or the like power of raising the said moneys as is hereinbefore vested in the

devisee or devisees in trust of the said hereditaments, and such power shall from time to time devolve to and become vested in the person or persons (if any) in whom the executors shall for the time being be vested; but any sale or mortgage under this act shall operate only on the estate and interest, whether legal or equitable, of the testator, and shall not render it unnecessary to get in any outstanding subsisting legal estate.

SEC. 17. *Purchasers &c., not bound to inquire as to powers.*—Purchasers or mortgagees shall not be bound to inquire whether the powers conferred by sections fourteen, fifteen, and sixteen of this act, or either of them, shall have been duly and correctly exercised by the person or persons acting in virtue thereof.

SEC. 18. *Sections 14, 15, and 16 not to affect certain sales, &c., nor to extend to devisees in fee or in tail.*—The provisions contained in sections fourteen, fifteen, and sixteen shall not in any way prejudice or affect any sale or mortgage already made or hereafter to be made, under or in pursuance of any will coming into operation before the passing of this act, but the validity of any such sale or mortgage shall be ascertained and determined in all respects as if this act had not passed; and the said several sections shall not extend to a devise to any person or persons in fee or in tail, or for the testator's whole estate and interest charged with debts or legacies, nor shall they affect the power of any such devisee or devisees to sell or mortgage as he or they may by law now do.

INHERITANCE.

SEC. 19. *Descent how to be traced.*—Where there shall be a total failure of heirs of the purchaser or where any land shall be descendible as if an ancestor had been the purchaser thereof, and there shall be a total failure of the heirs of such ancestor, then and in every such case the land shall descend and the descent shall thenceforth be traced from the person last entitled to the land as if he had been the purchaser thereof.

SEC. 20. *Preceding section incorporated with.*—The last preceding section shall be read as part of the act "for the Amendment of the Law of Inheritance," of the session of the 3 & 4 W. 4, c. 106.

ASSIGNMENT OF PERSONALTY.

SEC. 21. *Assignment to self and others.*—Any person shall have power to assign personal property, now by law assignable, including chattels real, directly to himself and another person or other persons or corporation, by the like means as he might assign the same to another.

PURCHASERS.

SEC. 22. *After December 31 1859, provision as to registry contained in 2 & 3 V. c. 11, and 18 & 19 V. c. 15, to apply to Crown debts.*—From and after the 31st day of December, 1859, the provision for re-registry of judgments, decrees or orders, rules or orders, contained in the act of the session of the 2 & 3 V. c. 11, as explained and amended by the act of the session of

the 18 & 19 V. c. 15, shall apply to every such judgment, statute, recognisance, inquisition, obligation, specialty, or acceptance of office as is by sec. 8 of the first mentioned act required to be registered, so that it shall be obligatory on the Crown, in order to bind the lands, tenements, or hereditaments of its debtors or accountants, as against purchasers, mortgagees, or creditors becoming such after the 31st day of December, 1859, to re-register, in like manner as is obligatory on a private person, and so that notice of any such judgment, statute, recognisance, inquisition, obligation, specialty or acceptance of office, not duly re-registered, shall not avail against purchasers, mortgagees, or creditors becoming such after the 31st day of December, 1859, as to lands, tenements, or hereditaments; and this provision shall apply to every such judgment, statute, recognisance, inquisition, obligation, specialty, or acceptance of office as since the passing of the first-mentioned act has been registered under the provisions therein contained, or as shall hereafter be so registered; this section shall not extend to Ireland.

SEC. 23. *Not to be bound to see to the application of purchase money.*—The *bonâ fide* payment to and the receipt of any person to whom any purchase or mortgage money shall be payable upon any express or implied trust shall effectually discharge the person paying the same from seeing to the application or being answerable for the misapplication thereof, unless the contrary shall be expressly declared by the instrument creating the trust or security.

SEC. 24. *Punishment of vendor, &c., for fraudulent concealment of deeds, &c., or falsifying pedigree.*—Any seller or mortgagor of land, or of any chattels, real or personal, or choses in action conveyed or assigned to a purchaser, or the solicitor or agent of any such seller or mortgagor, who shall after the passing of this act conceal any settlement, deed, will, or other instrument material to the title or any incumbrance from the purchaser, or falsify any pedigree upon which the title does or may depend, in order to induce him to accept the title offered or produced to him, with intent in any of such cases to defraud, shall be guilty of a misdemeanor, and being found guilty shall be liable, at the discretion of the court, to suffer such punishment, by fine or imprisonment for any time not exceeding two years, with or without hard labour, or by both, as the court shall award, and shall also be liable to an action for damages at the suit of the purchaser or mortgagee, or those claiming under the purchaser or mortgagee, for any loss sustained by them or either or any of them in consequence of the settlement, deed, will, or other instruments or incumbrance so concealed, or of any claim made by any person under such pedigree, but whose right was concealed by the falsification of such pedigree; and in estimating such damages, where the estate shall be recovered from such purchaser or mortgagee, or from those claiming under the purchaser or mortgagee, regard shall be had to any expenditure by them or either or any of them in improvements on the land; but no prosecution for any offence included in this section against any seller or mortgagor, or any

solicitor or agent, shall be commenced without the sanction of her Majesty's Attorney-General, or in case that office be vacant, of her Majesty's Solicitor-General; and no such sanction shall be given without such previous notice of the application for leave to prosecute to the person intended to be prosecuted as the Attorney-General or Solicitor-General (as the case may be) shall direct.

SEC. 25. *Interpretation of terms.*—In the construction of the previous provisions in this act, the term "land" shall be taken to include all tenements and hereditaments, and any part or share of estate or interest in any tenements or hereditaments, of what tenure or kind soever; and

The term "mortgage" shall be taken to include every instrument by virtue whereof land is in any manner conveyed, assigned, pledged, or charged as security for the repayment of money or money's worth lent, and to be reconveyed, re-assigned, or released on satisfaction of the debt; and

The term "mortgagor" shall be taken to include every person by whom such conveyance, assignment, pledge, or charge as aforesaid shall be made; and

The term "mortgagee" shall be taken to include every person to whom or in whose favour any such conveyance, assignment, pledge, or charge as aforesaid is made or transferred:

The term "judgment" shall be taken to include registered decrees, orders of courts of equity and bankruptcy, and other orders having the operation of judgments.

TRUSTEES AND EXECUTORS.

SEC. 26. *Trustee, &c., making payment under power of attorney not to be liable by reason of death of party giving such power.*—No trustee, executor, or administrator making any payment or doing any act *bonâ fide* under or in pursuance of any power of attorney, shall be liable for the moneys so paid or the act so done, by reason that the person who gave the power of attorney was dead at the time of such payment or act, or had done some act to avoid the power, provided that the fact of the death, or of the doing of such act as last aforesaid, at the time of such payment or act *bonâ fide* done as aforesaid by such trustee, executor, or administrator, was not known to him: provided always, that nothing herein contained shall in any manner affect or prejudice the right of any person entitled to the money against the person to whom such payment shall have been made, but that such person so entitled shall have the same remedy against such person to whom such payment shall be made as he would have had against the trustee, executor, or administrator if the money had not been paid away under such power of attorney.

SEC. 27. *As to liability of executor or administrator in respect of rents, covenants, or agreements.*—Where an executor or administrator, liable as such to the rents, covenants, or agreements contained in any lease or agreement for a lease granted or assigned to the testator or intestate whose

estate is being administered, shall have satisfied all such liabilities under the said lease or agreement for a lease as may have accrued due and been claimed up to the time of the assignment hereafter mentioned, and shall have set apart a sufficient fund to answer any future claim that may be made in respect of any fixed and ascertained sum covenanted or agreed by the lessee to be laid out on the property demised or agreed to be demised, although the period for laying out the same may not have arrived, and shall have assigned the lease or agreement for a lease to a purchaser thereof, he shall be at liberty to distribute the residuary personal estate of the deceased to and amongst the parties entitled thereto respectively, without appropriating any part, or any further part (as the case may be), of the personal estate of the deceased to meet any future liability under the said lease or agreement for a lease; and the executor or administrator so distributing the residuary estate shall not, after having assigned the said lease or agreement for a lease, and having, where necessary, set apart such sufficient fund as aforesaid, be personally liable in respect of any subsequent claim under the said lease or agreement for a lease; but nothing herein contained shall prejudice the right of the lessor or those claiming under him to follow the assets of the deceased into the hands of the person or persons to or amongst whom the said assets may have been distributed.

SEC. 28. *As to liability of executor, &c., in respect of rents, &c., in conveyances on rentcharge.*—In like manner, where an executor or administrator liable as such to the rent, covenants, or agreements contained in any conveyance on chief rent or rentcharge (whether any such rent be by limitation of use, grant or reservation), or agreement for such conveyance, granted or assigned to or made and entered into with the testator or intestate whose estate is being administered, shall have satisfied all such liabilities under the said conveyance, or agreement for a conveyance, as may have accrued due and being claimed up to the time of the conveyance hereafter mentioned, and shall have set apart a sufficient fund to answer any future claim that may be made in respect of any fixed and ascertained sum covenanted or agreed by the grantee to be laid out on the property conveyed, or agreed to be conveyed, although the period for laying out the same may not have arrived, and shall have conveyed such property, or assigned the said agreement for such conveyance as aforesaid, to a purchaser thereof, he shall be at liberty to distribute the residuary personal estate of the deceased to and amongst the parties entitled thereto respectively, without appropriating any part or any further part (as the case may be) of the personal estate of the deceased to meet any future liability under the said conveyance or agreement for a conveyance; and the executor or administrator so distributing the residuary estate shall not, after having made or executed such conveyance or assignment, and having, where necessary, set apart such sufficient fund as aforesaid, be personally liable in respect of any subsequent claim under the said conveyance, or agreement for conveyance; but nothing herein con-

tained shall prejudice the right of the grantor, or those claiming under him, to follow the assets of the deceased into the hands of the person or persons to or among whom the said assets may have been distributed.

SEC. 29. *As to distribution of the assets of testator or intestate after notice given by executor or administrator.*—Where an executor or administrator shall have given such or the like notices as in the opinion of the court in which such executor or administrator is sought to be charged would, have been given by the Court of Chancery in an administration suit, for creditors and others to send in to the executor or administrator their claims against the estate of the testator or intestate, such executor or administrator shall, at the expiration of the time named in the said notices or the last of the said notices for sending in such claims, be at liberty to distribute the assets of the testator or intestate, or any part thereof, amongst the parties entitled thereto, having regard to the claims of which such executor or administrator has then notice, and shall not be liable for the assets or any part thereof so distributed to any person of whose claim such executor or administrator shall not have had notice at the time of distribution of the said assets or a part thereof, as the case may be; but nothing in the present act contained shall prejudice the right of any creditor or claimant to follow the assets or any part thereof into the hands of the person or persons who may have received the same respectively.

SEC. 30. *Trustee, executor, &c., may apply by petition to judge of Chancery for opinion, advice, &c., in management, &c., of trust property.*—Any trustee, executor, or administrator shall be at liberty, without the institution of a suit, to apply by petition to any judge of the High Court of Chancery, or by summons upon a written statement to any such judge at chambers, for the opinion, advice, or direction of such judge on any question respecting the management or administration of the trust property or the assets of any testator or intestate, such application to be served upon or the hearing thereof to be attended by all persons interested in such application, or such of them as the said judge shall think expedient; and the trustee, executor, or administrator acting upon the opinion, advice, or direction given by the said judge shall be deemed, so far as regards his own responsibility, to have discharged his duty as such trustee, executor, or administrator in the subject-matter of the said application; provided nevertheless, that this act shall not extend to indemnify any trustee, executor, or administrator in respect of any act done in accordance with such opinion, advice, or direction as aforesaid, if such trustee, executor, or administrator shall have been guilty of any fraud or wilful concealment or misrepresentation in obtaining such opinion, advice, or direction; and the costs of such application as aforesaid shall be in the discretion of the judge to whom the said application shall be made.

SEC. 31. *Every trust instrument to be deemed to contain clauses for the indemnity and reimbursement of the trustees.*—Every deed, will, or other instrument creating a trust either expressly or by implication shall, without prejudice to the clauses actually contained therein, be deemed to contain a clause in the words or to the effect following; that is to say, "That the

trustees or trustee for the time being of the said deed, will, or other instrument shall be respectively chargeable only for such moneys, stocks, funds, and securities as they shall respectively actually receive, notwithstanding their respectively signing any receipt for the sake of conformity, and shall be answerable and accountable only for their own acts, receipts, neglects, or defaults, and not for those of each other, nor for any banker, broker, or other person with whom any trust moneys or securities may be deposited, nor for the insufficiency or deficiency of any stocks, funds, or securities, nor for any other loss, unless the same shall happen through their own wilful default respectively; and also that it shall be lawful for the trustees or trustee for the time being of the said deed, will, or other instrument to reimburse themselves or himself, or pay or discharge out of the trust premises all expenses incurred in or about the execution of the trusts or powers of the said deed, will, or other instrument."

SEC. 32. *As to investments by trustees.*—When a trustee, executor, or administrator shall not by some instrument creating his trust, be expressly forbidden to invest any trust fund or real securities in any part of the United Kingdom, or on the stock of the Bank of England or Ireland, or on East India Stock, it shall be lawful for such trustee, executor, or administrator to invest such trust fund on such securities or stock; and he shall not be liable on that account as for a breach of trust, provided that such investment shall in other respects be reasonable and proper.

EXTENT OF ACT.

SEC. 33. *Act not to extend to Scotland.*—This act shall not extend to Scotland.

CAP. XXXVI. STAMP DUTIES — PROBATES — LICENSES TO PHYSICIANS — HAWKERS AND PEDLERS.

This act alters the stamp duties upon probates of wills and letters of administration by continuing the graduated scales of duties above the value of a million pounds; abolishes physicians' licences, and provides as to hawkers and pedlars (see *ante*, p. 271).

SEC. 1. *Graduated scales of stamp duties on probates, &c., continued on property above the value of £1,000,000.*—Whereas certain stamp duties contained in the schedule to the act passed in the 55 G. 3, c. 184, are now payable upon probates of wills and letters of administration in England and Ireland, and upon inventories to be exhibited and recorded in any commissary court in Scotland, and are imposed by certain graduated scales according to the value of the estate and effects for or in respect of which such probate or letters of administration are granted, or whereof such inventory is exhibited or recorded, but such graduated scales of duty cease where such value amounts to £1,000,000 and upwards, and it is expedient to extend and continue such graduation of duty as hereinafter-mentioned: be it enacted, that in lieu of the said stamp duties upon such probates and letters of administration and inventories respectively, where such value as aforesaid shall amount to £1,000,000 or upwards, there shall be charged and paid the following duties respectively; that is to say,

For every £100,000 of the whole value of such estate and effects, and any fractional part of £100,000,

Where the deceased shall have left any will or testament or testamentary disposition of his personal or moveable estate and effects, the stamp duty of £1500 ;

And where the deceased shall not have left any such will or testament or testamentary disposition, the stamp duty of £2250.

SEC. 2. *The stamp duty on licences to exercise the faculty of physic repealed.*

—The stamp of fifteen pounds for and in respect of the admission or licence of any person by the College of Physicians in England or Scotland to exercise the faculty of physic, or practise as a licentiate, granted by the said act passed in the 55 G. 3, c. 184, and the like duty now payable in Ireland by and under an act passed in the 5 & 6 V., to assimilate the stamp duties in Great Britain and Ireland, shall from and after the passing of this act be and the same are hereby repealed.

SEC. 3. *Nothing in 50 G. 3, c. 41, or 55 G. 3, c. 71, to hinder maker of goods, or his children, &c., from carrying abroad or exposing to sale such goods.*

—And whereas an act was passed in the 50 G. 3, c. 41, intituled “An Act for placing the Duties of Hawkers and Pedlars under the Management of the Commissioners of Hackney Coaches,” by which certain rates and duties (now under the care and management of the Commissioners of Inland Revenue) are required to be paid by every hawker, pedlar, petty chapman, and other trading person going from town to town or to other men's houses in England, Wales, or Berwick-upon-Tweed ; and every such person is thereby required to take out a licence as therein mentioned ; and it is by the said act provided, that nothing therein contained shall extend to hinder the real worker or workers, maker or makers, of any goods, wares, or manufactures of Great Britain, or his, her, or their children, apprentices, or known agents or servants, usually residing with such real workers or makers only, from carrying abroad or exposing to sale and selling by retail or otherwise any of the said goods, wares, or manufactures of his, her, or their own making, in any mart, market, or fair, and in every city, borough, town corporate, and market town : And whereas by an act passed in the 55 G. 3, c. 71, to regulate hawkers and pedlars in Scotland, licences chargeable with certain duties (now likewise under the care and management of the said commissioners) are required to be taken out by every such trading person in Scotland, with a similar proviso : be it also enacted, that nothing in the said two last-mentioned acts respectively shall extend to hinder any such real worker or maker, or his children, apprentices, or known agents or servants aforesaid, from carrying abroad or exposing to sale any of the said goods, wares, or manufactures of his own making, at any place whatever in Great Britain.

4. *Power to justices, on conviction of a hawker, to mitigate the penalty to one fourth.*—Where any person shall be convicted of an offence under either of the aforesaid acts relating to hawkers and pedlars whereby a pecuniary penalty has become forfeited, it shall be lawful for the justice of the peace, or other person before whom the information or complaint is heard, and he

is hereby authorised and empowered, if he shall think fit so to do, to mitigate the penalty to any sum not less than one fourth part thereof, over and above the necessary costs of the proceedings to be allowed by him

CAP. XLIII. INCLOSURES.

This act amends and extends the provisions of the acts for the Inclosure, Exchange, and Improvement of Land, and makes provision as to mines, surface damage, letting the herbage, partition, &c.

SEC. 1. *Provisional order to specify what rights are reserved as to mines, &c.*—On any inclosure where the mines, minerals, stone, or other substrata under the land to be inclosed shall be excepted or reserved to the lord of the manor or any other person, the provisional order to be made by the Inclosure Commissioners in England and Wales shall (in addition to the other matters to be specified therein under the said acts) specify whether or not a right to enter the lands when inclosed for the purpose of opening, working, or winning such mines, minerals, stone, and other substrata, is to be reserved to such lord or other person, and whether or not any compensation is to be made by the person exercising such last-mentioned right for any damage to the surface which may thereby be done, and if not, then whether or not any such other provision for compensation of such damage as hereinafter mentioned is to be made.

SEC. 2. *Provision as to surface damage.*—For the purpose of providing for compensation for any such damage as aforesaid, it shall be lawful for the lord of the manor or other the person entitled to such mines, minerals, stone, or other substrata as aforesaid, and for the other persons interested in the land proposed to be inclosed, or such proportion of the persons so interested as by sec. 27 of the 8 & 9 V. c. 118, are required to consent to an inclosure before the Inclosure Commissioners can in any annual general report certify their opinion that the proposed inclosure would be expedient, to agree as to the mode in which compensation for surface damage from such entry, and opening, working or winning, shall be made to the individual owners whose allotments may be so damaged, whether wholly by the lord or such other person entitled to the mines, minerals, stone, or other substrata as aforesaid, or wholly by the owners of allotments (including the lord or such other person) collectively, or partly by the lord or such other person and partly by the other owners of allotments collectively; and such agreement, when made, shall, if allowed by the Inclosure Commissioners, be stated to the valuer as part of his instructions, and its terms shall be embodied by him in his report and in his award, of which it shall form part.

SEC. 3. *Powers to work mines, &c.*—In every case in which the right and interest in all or any mines, minerals, stone, and other substrata are reserved by any provisional order to be issued after the passing of this act to the lord of the manor or such other person entitled to the soil of the land inclosed as aforesaid, and with a further reservation to the lord or to such other person of a right to enter the lands when inclosed, and work such mines, minerals, stone, and other substrata, it shall be lawful for the lord, his heirs and assigns, or for such other person entitled to the soil as

aforesaid, his heirs and assigns, at any and at all time and times thereafter, by himself or themselves, or his or their tenants, agents, or servants, and with or without horses or other animals, or carriages, and materials of all kinds, to enter upon the said lands or any part thereof, and to break the surface thereof, and search for, win, work, take, and carry away the said mines, minerals, stone, and other substrata, or any of them, and for that purpose to dig, sink, drive, and make pits, shafts, drifts, headways, levels, adits, airgates, watercourses, soughs, trenches, buddles, fences, and sluices, and to erect, build, and make pumps, engines, furnaces, smelting houses, stamping mills, ore and store houses, sheds, hovels, and stables, and other erections, and to do all other things necessary or convenient, as well for working the said mines, as for refining the metals and minerals, hewing and working the stone and other substrata, and removing all the water, slag, and rubbish from the works, and for the accommodation of the persons employed therein, and to occupy such part of the said land as shall be convenient and sufficient for laying, ordering, and dressing the ores, minerals, metals, stone, and other substrata, and, if judged necessary, to alter the course of streams, and to maintain, repair, and use any railroads or other roads for any of the purposes aforesaid, and generally to do all other things necessary or convenient for the sinking, winning, working, and carrying away the said mines, minerals, stone, and other substrata, and for refining the metals and minerals, and hewing and working the stone and other substrata thereby produced.

SEC. 4. *How damages to be assessed.*—In case it shall be provided that the whole or any part of such compensation as aforesaid shall be made by the owners of allotments collectively, either including or not including the lord or such other person as aforesaid, then all such damage as may at any time and from time to time be done to any allotment by any of the means as aforesaid shall be assessed and raised as follows; (that is to say,) it shall be lawful for any person who may sustain any such damage as aforesaid to give information thereof to any two or more justices of the peace for the county or riding or other division or place within which the lands shall have been inclosed, or the greater part thereof, shall be situate (ten days previous notice of such intended information having been fixed on the church-door of the parish or other ecclesiastical district); and such justices shall and are hereby empowered to examine and inquire into such complaint in a summary way, and by examination of witnesses upon oath, or by such other evidence as they shall think proper; and such justices shall determine the amount of such damage, and order the payment thereof to the party damaged by the persons and in the manner hereinafter expressed.

SEC. 5. *Payment of damages.*—Every sum of money to be paid in satisfaction of such damages, and the reasonable charges of giving and prosecuting such information (to be settled by the said justices), shall be borne and paid by the owners for the time being of all the allotments on whom it shall by the award have been imposed, or their tenants, including the owner of the allotment damaged, or his tenant, by a rate to be assessed

upon them in respect of their allotments or their shares therein by such justices according to the respective yearly values thereof, which shall be ascertained in manner hereinafter in that behalf directed or referred to.

SEC. 6. *To be levied by distress.*—In case any person who shall be charged to such rate as aforesaid shall refuse or neglect to pay the same within a time to be limited by the said justices, to the person for the time being entitled to such payment, then any two or more justices of such county or riding, or other district or place as aforesaid, shall, by warrant under their hands and seals, cause the same to be levied by distress; and in case any occupying tenant of any hereditaments constituting or being part of any of the said allotments shall pay any part of such rate as aforesaid, every such occupier shall be at liberty to deduct the same out of his next rent, and his landlord shall allow such deduction, unless there shall be some provision to the contrary in the lease or agreement under which such hereditaments are held by such occupier.

SEC. 7. *Annual value of allotments to be stated in award.*—In every case to which the provisions of this act shall be applicable, the valuer acting in the matter of the inclosure shall by his award ascertain and determine the proportionate shares of any such rate as aforesaid to be paid in respect of each of the allotments to be set out under the inclosure, and the average annual value per acre of each allotment at the time of making his award, and such average annual value shall thereafter be taken to be the yearly value per acre of such allotment for the purpose of the assessment of the same to the rate by this act imposed thereon in the cases hereinbefore provided for.

SEC. 8. *Herbage may be let.*—Where instructions shall be given to the valuer to let the herbage of any land to be inclosed, the same shall, at any time after the rights of sheepwalk, common, or other rights have been extinguished or the exercise thereof suspended, be let by the valuer for such time and in such manner and subject to such conditions as he, with the approbation of the Inclosure Commissioners, shall think right; and any person taking such herbage shall hold the same as tenant to the valuer, and all moneys received by way of rent shall be applied in and towards payment of the expenses of the inclosure.

SEC. 9. *Purchase money of land sold may be apportioned.*—Where the sale of any land proposed to be inclosed, not exceeding fifty acres, shall have been authorised by the commissioners, under the provisions of the said acts, the surplus of the purchase money may be either appropriated as provided by the said acts, or a majority in number and interest of the persons interested therein may, at a meeting to be convened by the commissioners for the purpose, resolve that such surplus shall be apportioned, and thereupon the same shall be dealt with in such and the same manner as if the same were money received under the "Lands Clauses Consolidation Act, 1845," and paid into the Bank of England to the credit of an account to be named by the commissioners, under the act 17 & 18 V. c. 97.

SEC. 10. *Lessees need not join in application for partition.*—In partitions it shall not be necessary that any lessee, being a person jointly interested

within the provisions of the said acts in any land or other subject matter of partition, should join in the application to the commissioners; and whenever any land or other subject matter of such partition shall be held by one entire rent, the order of partition shall apportion the rent to be paid to each of the persons to whom any part of the same may be allotted in severalty; and after the confirmation of such order, all rents and services due and owing or thereafter to become due and owing in respect of the land or other subject matter of partition shall be paid and payable to the person to whom the same shall be allotted in severalty; provided always, that such lessee shall not have the power of giving notice of dissent, under the provisions of the said acts.

SEC. 11. *In partitions dissents not to apply in certain cases.*—Notwithstanding anything therein contained, the provisions of the said acts as to notice of dissent shall not apply to partitions in which the application is made by two-thirds in value of the persons interested in the land or other subject matter of partition.

SEC. 12. *Where patronage vested in the Crown, who to be deemed patron.*—Whenever the patronage of any benefice to which the provisions of the said acts are applicable shall be vested in her Majesty, the Lord High Treasurer or First Lord Commissioner of the Treasury for the time being, where the value of such benefice is above the yearly value of £20 in the King's books, and where such value is of or below the yearly value of £20 in the King's books, the Lord Chancellor, or Lord Keeper, or First Lord Commissioner of the Great Seal for the time being, shall for the purposes of the said acts be substituted instead of the patron: provided nevertheless, that if such patronage is vested in her Majesty in right of the Duchy of Lancaster the Chancellor for the time being of such duchy shall for the purposes of the said acts be substituted instead of the patron.

SEC. 13. *Tenancies at rackrent.*—Whenever a valuer acting in the matter of any inclosure shall have directed the allotments to be entered upon by the persons respectively for whom the same shall be intended, all leases, agreements, and tenancies at rackrent subsisting of any part of the land to be inclosed or exchanged under the award of the valuer, or any common right thereon, shall, so far only as respects the land to be divided, allotted, or exchanged, or common right, cease and be void, at such time or times as the valuer shall by writing under his hand direct or appoint, although the lessees or landlords may not have made and paid such satisfaction to the respective lessees or tenants as is by the said acts provided: provided always, that interest at the rate of £5 per centum per annum shall be payable from the day on which such tenancies shall cease to the day of payment, on the sum which has been or shall thereafter be ascertained to be due to such lessees or tenants, and shall, with the amount ascertained to be due as aforesaid, be recoverable from the person liable to pay the same in the same manner as penalties and forfeitures are recoverable under the said acts.

SEC. 14. *Annexation of map to an inclosure award may be dispensed with.*—Where by reason of the size of the map or other circumstances the com-

missioners shall be of opinion that it is not expedient that the valuer should annex to the engrossment of any inclosure award the map required by the said acts to be annexed thereto, they may, if they shall see fit, in lieu of such annexation, certify under their hands and seal that the map not so annexed is the map referred to in the award to which the same applies, and thereupon every map having such certificate shall have the same force and effect and be referred to as if the same were annexed to the said award.

SEC. 15. *Act deemed part of "the Acts for the Inclosure, &c., of Land."*
—This act shall be taken to be part of the said acts, and shall be construed therewith, and be deemed to be included under any reference to the "Acts for the Inclosure, Exchange, and Improvement of Land."

Moot Points.

No. 130.—*Public House, &c.*

Is an innkeeper bound to keep his house open for the sale of beer, &c., on lawful hours on Sundays, or can he legally close his house for the whole day if he so thinks fit?

F. I. W.

No. 131.—*Promissory Note.*

Can one recover on a promissory note made in the following manner?
"Six months after my decease pay to the order of &c."

State reasons for your opinions.

P. J. W.

No. 132.—*Husband's Interest in Deceased Wife's Property.*

A., the wife of B. (by whom she has had issue capable of inheriting), dies seised in fee of the manor of C., which embraces the right of presentation to several advowsons, and an extensive right of common.

What interest (if any) does B. take in the property?

ARNO.

No. 133.—*Goods exempt from Distress—Action for Distraint.*

A landlord distrained certain goods for rent, which said goods were exempt from distress, being materials sent to be wrought on in the way of trade. The person to whom the goods belong has sued the landlord and his agent in the county court for the value of the goods so distrained.

Quære: Whether the tenant ought not to have been sued instead of the landlord and his agent?

Answers to Moot Points.

No. 98.—*Voluntary Settlement, &c. (ante, p. 290).*

Please to correct in the Number for the next month the Answer to Question 98; for *collateral considerations* it ought to be *collateral relations*. The Answer is in the Number for last month, p. 290, seventh line from the top.

J. J. I.

No. 117.—*Mortgage for Old and New Debts* (*ante*, p. 285).

Though the general rule is, that a purchaser or mortgagee need not see to the application of his money where there is no schedule of the debts, yet this rule is never carried so far as to put it in the power of the devisee in trust, or of the heir-at-law, who in the Court of Chancery is considered as a trustee, to favour one creditor before another, which would be the consequence if this was allowed. This is not like the case of an executor, who, having power to administer the assets, and the legal estate in him, may sell a term, and the vendee retain it, and this even to satisfy a debt of his own, as was held in *Nugent v. Nugent* (1 Ak. 463). Therefore, I think all that the mortgagee can recover is the principal and interest of the money advanced by him to C. D., but as to the old debt, he will have to come in *pari passu* with the rest of the creditors. GEORGE R. ROGERSON.

No. 118.—*Fraudulent Conveyance—Marriage Settlement* (*ante*, p. 285).

I am of opinion that the conveyance to the trustees C. and D., being in contemplation of marriage, and, therefore, for a valuable consideration, is valid as against the *bonâ fide* purchaser for a valuable consideration under the power of sale; for in *Cruise's Digest* (vol. 2, p. 83) it is laid down, that, upon the execution of a mortgage deed, the mortgagee becomes seised of the legal estate; but in this case the mortgagee could not possibly become seised of the legal estate, for the legal estate was, by the very words in the question, "Upon trust to pay the rents and profits to A." (*vide Hill on Trustees*, p. 212), vested in the trustee; and as it is stated in the question that the trustees never acted, I presume they did not join in the mortgage, or otherwise dispose of their legal estate to the mortgagee; therefore the mortgagee, presuming his mortgage deed was valid, could merely dispose, under the power of sale contained in the mortgage deed, of the life estates of A. and B. And again, if the mortgagee could sell the whole estate in fee, A. and B. would, by executing the mortgage deed, defeat the remainder over in fee to E., to obviate which it is laid down in *Cruise* (vol. 2, p. 270), that, "a person who has only a trust estate (as in this case A. and B. only had) cannot, by *any mode* of conveyance, destroy a contingent remainder expectant on his estate (and I apprehend this applies to a vested remainder), for the legal estate being in his trustees there remains a right of entry in them which will support the remainders;" then the mortgagee having notice would make the case, as regards himself, worse; for in *Cruise's Digest* (vol. p. 450) I find the following: "Where a purchaser has notice of the trust (as in this case the mortgagee had), though he pays a valuable consideration, *he shall be subject to it*. For as Lord Hardwicke says, if a person will purchase with notice of another's right, his giving a consideration will not avail him; for he throws away his money voluntarily, and of his own free will." After consulting the above authorities, and other authorities, though not bearing on the point as fully as those cited, I do not entertain the least doubt as to the correctness of my opinion as above expressed. JO. IBBERSON.

No. 119.—*Powers of New Divorce Court (ante, p. 286).*

I do not think that, in this case, the lady can obtain a divorce simply on the grounds of adultery. I am induced to think she might obtain a sentence of *judicial separation* under the 7th section of 20 & 21 Vic. c. 85; but if the adultery has been coupled with cruelty, then I apprehend she may obtain a dissolution of the marriage under the 27th section of the same act, and the court in that case has power under the 33rd section to order the husband to secure to the wife such annual sum of money for any term, not exceeding her life, as, having regard to her fortune (if any), to the ability of the husband, and to the conduct of the parties, it shall deem reasonable. I have searched diligently for a case in point, and can find none as applicable to this case as *Smith v. Smith*, Law Journ., March, 1859.

JO. IBBERSON.

No. 120.—*Priorities between Mortgagees and Legatees (ante, p. 286).*

The general rule is, where an estate is given to be sold by trustees for payment of debts set down in a schedule, the purchaser is obliged to see to the application of the moneys towards payment of the debts, but where the debts are not particularised it is otherwise. In the moot question the legacies certainly appear, but the debts are to be paid generally—the purchaser cannot know the testator's creditors, and, as they are to be first paid, and the trustees cannot pay the moneys without sale or mortgage of the premises, I think the mortgagee ought in the first place to be satisfied before the legacies which are charged on the premises.

GEORGE R. ROGERSON.

No. 121.—*Delegation of Trust (ante, p. 286).*

In the case of *Hardwicke v. Mynd* (1 Anstr. 109) it was decided, that where lands are conveyed or devised to a trustee to sell for payment of debts, and he conveys to a third person, *for the purposes of the trust*, sales made by him are as valid as if made by the trustee himself, and his discharges for the purchase moneys are equally effectual. But the grounds on which this decision was arrived at appear to have been chiefly the insertion of the words "for the purposes of the trust," and since, in the point suggested by Mr. Rogerson, no reference whatever is made to the existing charge, I am inclined to think, although unable to find any authority on the point, that the objection to the title is capable of being sustained.

A. K. R.

No. 122.—*Party taking down his own House (ante, p. 286).*

Judging from the case of *Luck v. Seward* (4 C. & P. 106), which is the nearest one in point I can find, I think that if the injury done to C. D.'s house by A. B. were such as persons of competent skill could not guard against, A. B. would not be liable for the damage. If, however, the slightest negligence or want of skill could be attributed to A. B., he would undoubtedly be liable in an action on the case.

A. K. R.

No. 123.—*Death of Devisee in Testator's lifetime—Curtesy (ante, p. 286).*

Curtesy is an estate for life given by law to the husband in all the lands

and tenements of inheritance of which the wife was solely seised in fee simple or fee tall, and which the issue of the marriage might have inherited. But in the present case B. was never seised, since she died in the testator's lifetime, and therefore her husband is certainly not entitled to curtesy.

A. K. R.

No. 123.—*Death of Devisee in Testator's lifetime*.—Curtesy (*ante*, p. 287).

A similar point to this was lately laid before an eminent conveyancer, and his opinion was that curtesy would attach. The words of the 33rd section of the Wills Act, referring to a devise or bequest to child or other issue of a testator, are, "such devise or bequest shall not lapse, but shall take effect as if the death of such person had happened immediately after the death of the testator, unless a contrary intention shall appear by the will." It is clear, that had B. died after the testator, her husband would be entitled to curtesy, and by the statute she constructively does so. I am of opinion, therefore, that B.'s husband is so entitled.

T. D. G.

No. 123.—*Death of Devisee in Testator's lifetime*—Curtesy (*ante*, p. 286).

I am of opinion that the husband is not entitled to curtesy, seeing that B. was not actually seised in possession.

ARNO.

No. 123.—*Death of Devisee in Testator's Lifetime*—Curtesy (*ante*, p. 286).

One of the requisites necessary to make a tenant by the curtesy is the *seisin of the wife*, and the *seisin of the wife* must be an actual *seisin* or possession of the lands; not a bare right to possess, which is a *seisin in law*, but an *actual possession*, which is a *seisin in deed*. Now B. could not possibly be actually possessed, for she died in the testator's lifetime, and, therefore, as the will of A. could not come into operation until after his death, the husband of B. cannot be tenant by the curtesy by reason of B., the wife not being actually possessed, which is one of the principal requisites (*Vide Steph's Commentaries*, vol. 1, p. 254, 3rd ed.).

JO. IBBERSON.

No. 124.—*Mortgage—Decree for Reconveyance—Covenant to produce*, &c. (*ante*, p. 287).

A mortgagee, who has been decreed to reconvey one undivided moiety of an estate, included in his security to the mortgagor, is bound to covenant to produce the title-deeds of the whole estate (*Yates v. Plumbe*, 2 Sm. & G. 174).

F. I. W.

No. 124.—*Mortgage—Decree for Reconveyance* (*ante*, p. 287).

Without an express stipulation to the contrary the vendor is bound to supply a purchaser with attested copies of the deeds which are not delivered up to him, with the exception of instruments on record; and a purchaser is entitled to a covenant for their production (2 Sug. V. and P. 118, 122, 10th ed.). In the present case, since the mortgagee has been decreed to reconvey a moiety of the estate to the mortgagor, who, I think, occupies, to all intents and purposes the position of a purchaser, I am of opinion that the latter can legally demand the insertion of a covenant for production of the deeds.

A. K. R.

No. 125.—*Notice of Covenants in Lease* (ante, p. 287).

In *Wilbraham v. Livesey* (18 Beav. 206) it was held, that one who contracts for a lease from a party, with knowledge that he holds under a leasehold title, has notice of ordinary, but not of unusual covenants in the original lease (but see *Pope v. Garland*, 10 L. J. Ex. Eq. 19; and *Smith v. Capron*, 19 L. J. Ch. 322).

T. D. G.

No. 125.—*Notice of Covenants in Lease* (ante, p. 287).

It is a rule of law that notice of a deed is notice of its contents; therefore A. would be held to have notice of the unusual covenants contained in the lease.

LEX.

No. 126.—*No Consideration for Bill* (ante, p. 287).

A plea by G. of no "*consideration for his acceptance*" will be bad on special demurrer. The plea should state affirmatively the circumstances relating to the consideration. But it is good after verdict (*Vide Easton v. Pratchett*, 3 Dowling's Reports p. 472; *Stoughton v. Earl of Kilmorey*, 3 Dowl. 705; *Graham v. Pitman*, 3 Ad. & El. p. 521).

JO. IBBERSON.

No. 126.—*No Consideration for Bill* (ante, p. 287).

I concur with the view of the mooter, that the plea of "no consideration for his acceptance" would not be held good on special demurrer (*Vide Sturtevant v. Ford*, 4 Scott N. R. 668).

CHAS. ROBINSON.

No. 127.—*Waste by Tenant for Life* (ante, p. 287).

It is settled that a tenant for life, *without impeachment of waste*, is not allowed to pull down or deface the family mansion, or fell timber planted or left standing for ornament, or commit other injuries of the like nature, all of which are termed *equitable waste*; for the Court of Chancery, administering equity, will grant an injunction restraining such proceedings (*Vide Duke of Leeds v. Earl Amherst*, 16 L. J. Rep. N. S. (Ch.) 5; *Morris v. Morris*, 16 L. J. Rep. N. S. (Ch.) 201; *William's Real Prop.* 5th ed. p. 25); but he is allowed to cut timber in a husband-like manner for his own benefit, to open mines, and commit other acts of waste with impunity (*Vide William's Real Prop.* 5th ed. p. 25).

JO. IBBERSON.

No. 127.—*Waste by Tenant for Life* (ante, p. 287).

In this case, I agree with the mooter in his opinion, that an injunction to stay waste would be granted. A court of equity will not permit a tenant for life to destroy the premises, as by pulling down a house, &c., even if his lease be granted without impeachment of waste (*Ashton v. Ashton*, 1 Ves. sen. 264).

F. I. W.

No. 127.—*Waste by Tenant for Life* (ante, p. 287).

If the estate is given to A. without impeachment of waste he is at liberty to cut timber, open mines, and commit acts of waste with impunity, but the Court of Chancery will restrain him by injunction from committing equitable waste, as by pulling down the family mansion house, or cutting down trees planted and growing for ornament. If the waste had been merely

permissive, as by shutting up the house, and suffering it to fall into decay, equity would not have interfered, for the Court of Chancery has no power to interfere in the case of permissive waste by a tenant for life.

LEX.

No. 127.—*Waste by Tenant for Life* (ante, p. 287).

A tenant for life is not at liberty to commit equitable waste, and the court will grant an injunction to stay such waste.

In the case mooted, the court would compel him to restore the house (Vide Lord Barnard's Case, 2 Vern. 738).

A tenant for life would not be allowed to cut ornamental timber, even if planted by himself (Coffin v. Coffin, Jac. 71).

ARNO.

No. 127.—*Waste by Tenant for Life* (ante, p. 287).

A., although tenant for life, without impeachment of waste, is not justified in pulling down the mansion house, or cutting ornamental timber, which is equitable waste (see the Duke of Leeds v. Earl Amherst, 16 L. J. Ch. 5).

T. D. G.

No. 129.—*Renewal of Leases by Trustees* (ante, p. 287).

Trustees, to whom a discretionary power of renewing leases is given, are bound to renew them when reasonable terms can be obtained (Mortimer v. Watts, 28 L. J. R. (N. S.) Ch. 169; 14 Beav. 616).

F. I. W.

No. 129.—*Renewal of Leases by Trustees* (ante, p. 287).

It is still somewhat unsettled how far it is incumbent on trustees of beneficial leases to renew them at the usual periods, where no positive trust to renew is contained in the trust instrument; but if the renewable leasehold estate is given to trustees upon trust for a person for life, with remainders over, and the trustees are invested with a discretionary power of renewing, they will not, in the exercise of that discretion, be permitted to destroy the estate confided to them by neglecting to renew, but, on the contrary, the remaindermen can compel the trustees to renew (Vide Hill on Trustees, p. 438).

JO. IBBERSON.

No. 170.—*Infant Baron* (ante, p. 236).

I have not seen an answer to this moot point by any of your correspondents. The general rule of law is, that by the act of marriage husband and wife become, in contemplation of law, one person, and continue so during the coverture or marriage; the legal existence of the wife is, in fact, merged in that of the husband, and he (if of full age) therefore becomes liable to all the debts of his wife contracted subsequently to her marriage, however improvident; and the fact of his having no fortune with her does not make any difference. In the moot point the husband is still an infant, and therefore only liable to his debts contracted for necessaries suitable to his station, and I apprehend that on the same principle he would only be liable to the debts of his wife for necessaries.

LEX.

EFFECT OF CHARGE OF DEBTS.

Difficulties in making a Title, where there is a Testamentary Charge of Debts.

Mr. Dart (Vendors, pp. 400—403, 476, n.) has very fully gone into this important matter, but since the publication of his last (3rd) edition, the late Lord Chancellor has given his views of the subject, which will probably be considered as a final settlement of the point, though there are not wanting writers who hold different views. But, before stating the views of the Lord Chancellor, we will glance at Mr. Dart's propositions. He is speaking of charges of debt created by not only a direct expression of intention to that effect, but even a mere direction that the debts should be paid by the executors being *also* devisees of the land. After considering the case of there being no person named to exercise the power of sale, he proceeds to mention the case of land being devised to trustees, and concludes that in such case the devisees are "apparently the proper parties to sell and give receipts: for the testator has constituted them the fiduciary owners of the land for the purposes of his will; and the implied trust for sale may well be read as ingrafted on the express trusts. See and consider *Shaw v. Bo.*, 1 Ke. 559; *Ball v. Ha.*, 4 My. & C. 264; *Doe v. Hu.*, 6 Ex. 231; *Stroughill v. An.*, 1 De G. M. & G. 647. But the point of greatest difficulty and importance is that which arises when a will contains a charge of debts, and a devise of the land to A. B. in fee beneficially, A. B. not being the executor. In such cases it has been the practice to accept titles from the devisee alone, without requiring evidence of the debts having been paid, or causing the executors to concur in the conveyance. Recent decisions (*Robinson v. Lo.*, 17 Beav. 592; 5 De G. M. & G. 272; *Wrigley v. Sy.*, 2 Jur. N. S. 78; and see *Gosling v. Ca.*, 1 Coll. 650), however, tend to raise a very serious question, as to whether this practice has not been erroneous, and as to whether the sale should not have been by the executors, or at any rate with their concurrence; even the efficacy of such concurrence is doubted by many practitioners, upon the ground, that the power of the executors to sell, if it exists, is a collateral power, and is incapable of being released. On the other hand, it has been decided at law (*Doe v. Hu.*, 6 Ex. 224), that as against the heir—and his case seems undistinguishable from that of a devisee—the executors have no power of sale; and the preponderance of authority in equity (see *Johnson v. Ke.*, 3 My. & K. 624; *Eland v. El.*, 4 M. & C. 428; *Ball v. Ha.*, sup.; *Stroughill v. An.*, sup.) seems to point to the conclusion, that the owner of the estate is the person whose duty it is to proceed to a sale, if a sale be necessary."

Mr. Dart then remarks, that it is impossible to lay down confidently any rule of practice in the last-mentioned case, but that it is "reasonably clear" that a purchaser from the devisee or the devisee's alienee should be satisfied that all debts have been paid, or should at least require the executor to authorise the proposed payment of the purchase money to the vendor (see

Storry v. Wa., 18 Jur. 503, stated 5 L. C. 5, 6; *Hope v. Li.*, 25 L. J. Ch. 90), though, as he states, it is not clear that the latter plan would perfect the title, adding, "it must be borne in mind, that in all cases where the legal title depends, or may eventually depend, upon the implying or not implying a legal power, the question is purely a legal one . . . until the decision of a court of law, whether a legal power does or does not exist, a title dependant upon the existence or non-existence of such a power will not be safe." (Since the above was written, we find that we have before, vol. pp. 84, 85, given Mr. Dart's views *in extenso*, and we beg to refer the reader thereto). We now beg to draw attention to some remarks which appeared in the *Jurist* (vol. 2, N. S. pp. 68—71). The writer says: "The subject in question was not long ago brought under the consideration of the Court of Exchequer in the recent case of *Doe d. Jones v. Hughes* (6 Exch. 223). In that case Evan Hughes began his will by subjecting all his real and personal estate with the payment of his just debts, funeral and testamentary expenses, and subject thereto he devised all his messuages, farms and lands (*except his Bala houses*) to his wife for life, with remainder to Hugh Hughes in fee. The Bala houses, being excepted from the devise, descended to the testator's heir-at-law; and the court, after an able argument, in which all the principal authorities were cited, and after taking time to consider, delivered a unanimous judgment, that the executrix of the will had no implied power, by reason of the charge of debts, to sell or mortgage the Bala houses, but that they descended to the heir, subject only to an *equitable charge* thereon of the testator's debts and funeral and testamentary expenses. The court remarked, that it was not within the principle of any of the cases in which it has been held that there is an implied power of sale or mortgage. 'We have perfectly satisfied ourselves on that head.' It would be difficult to find two better lawyers than the learned Barons Parke and Alderson, by whom this decision was pronounced.

"In *Robinson v. Lowater* (17 Beav. 601), however, his Honour the Master of the Rolls, made the following remarks on this case:—"The case of *Doe d. Jones v. Hughes* is relied upon to show that the executor could not make a good title to sell, and had no authority to sell vested in him. I find it difficult to reconcile the decision in that case with the numerous authorities to be found on this subject in Chancery; amongst which I may refer to *Ball v. Harris* (4 My. & C. 264), where Lord Cottenham observes, that a charge of debts is equivalent to a trust to sell so much as may be sufficient to pay them; *Forbes v. Peacock* (12 Sim. 541), which on this point is not affected by the reversal of the decision (1 Ph. 717); and to the case of *Gosling v. Carter* (1 Coll. 644). Before the case in the Exchequer, I had considered the law to be, that a charge of debts on an estate devised gave the executors an implied power of sale; because, to use the expression of Sir John Leach in *Bentham v. Wiltshire* (4 Madd. 49), "the power to sell is implied from the produce being to pass through their hands in the execution of their office, as in the payment of debts or of

legacies." The decision in *Robinson v. Lowater* was affirmed, on appeal, by the Lords Justices (5 De G. Mac. & G. 272), as we shall presently mention more at large; but the only reference made by the court to the case of *Doe d. Jones v. Hughes* was an inquiry by Sir J. L. Knight Bruce, L. J., whether that case dealt with anything beyond the question of the legal estate, and whether it could govern *Robinson v. Lowater*, which was an application to a court of equity to give effect to a charge.

In *Wrigley v. Sykes* (2 Jur. N. S. 78) the estates in question appear to have been mortgaged in fee; and their owner, Jonathan Wrigley, commenced his will by a general direction that all his just debts, funeral expenses, and charges of probate and legacies should be paid out of his real and personal estate. He then devised all his freehold lands and hereditaments, whatsoever and wheresoever, to James Lees and Thomas Bradbury, their executors, administrators, and assigns, for 500 years, upon the trusts thereafter stated; and he devised and bequeathed all his real and personal estate, subject, as to the freehold estates, to the term of 500 years, unto his five sons, John, James, Thomas, Jonathan, and George, their heirs, executors, administrators, and assigns, in equal shares, as tenants in common, upon condition that they should pay, in equal shares, two legacies and two annuities given by the will, and all his mortgage and other debts. And as to the term of 500 years, the testator declared that the said James Lees and Thomas Bradbury should stand possessed of the premises comprised therein, upon trust, if any of his said sons should, for the space of thirty days after demand, refuse or neglect to pay his or their proportion of the said two legacies and annuities, and his mortgage and other debts, or any part thereof, then the trustees should, out of the rents and profits of the share of any such son, or by mortgage or sale of the whole or a competent part of the share of such son, in the premises comprised in the term, raise such sums as such son ought to have paid, and all costs and expenses of raising the same. And the testator directed that the receipts of the said trustees or trustee for the time being should be sufficient discharges to the mortgagees or purchasers of any of the said hereditaments. The testator appointed his five sons executors, all of whom proved his will, and two of whom afterwards died. The personal estate being insufficient for the payment of the debt for which the premises were mortgaged, and the other debts of the testator, the plaintiffs, who were the three surviving sons, considered that they, as surviving executors, had power to sell the property, and accordingly contracted with the purchaser, the defendant, for the sale thereof to him; and upon his declining to complete, on the ground that they had no such power, without the concurrence of the trustees of the term, the plaintiffs instituted the suit for the specific performance of the contract. His Honour the Master of the Rolls decreed specific performance accordingly. He was of opinion that the creation of the term, which had a distinct and specified object, did not supersede the general charge for the payment of debts, which, in his opinion, gave the executors power to sell. 'It is very true,' added his Honour, 'that this

court will not compel a purchaser to take a doubtful title; but if the court is of opinion that the title is clear, and the contract is clear, the court is bound so to hold, and it cannot decline to act upon that opinion because *some other court* might come to a different conclusion.'

"On the question of specific performance, it may be remarked, by the bye, that the rule as laid down by Lord St Leonards in his *Concise Vendors* (p. 281), is, that if a point of law, on which the title depends, has been decided at law between other parties, and it is adverse to the title, the court, *whatever may be its opinion*, will not overrule the decision, but the purchaser will be allowed to have a case sent to a court of law. It will be a matter of regret if the alteration in the practice, with regard to sending cases to a court of law should result in purchasers being compelled in equity to accept titles which the courts of law hold to be bad. It is clear that the duties of an executor, as such, whether in payment of debts or otherwise, are by law confined to the personal estate of his testator. If he takes any power over the testator's real estate, it must be from an intention that he should do so either expressed or implied by the terms of the will. If a man makes a will, and appoints A. and B. executors, and then directs generally that his lands shall be sold, without saying by whom, it is held that a direction in the same will, that the purchase money shall be applied along with the personalty in payment of debts or legacies, implies a direction that A. and B. shall sell (*Tylden v. Hyde*, 2 Sim. & S. 238). A. and B. have accordingly power to sell, and to give a receipt to a purchaser; and if A. and B. were to renounce probate of the will, their power to sell the real estate would remain unimpeached (2 Sug. Pow. 138, 6th ed.). For such power does not arise in consequence of their being employed to distribute the testator's personalty, but in consequence of an *intention gathered from the terms of the will* that they should have a power of sale. If, however, a testator simply charges his real estate with the payment of his debts, subject to which charge he devises his lands to C. in fee, and appoints A. and B. executors, it is very difficult, on any ordinary principle of construction, to see in this a direction that A. and B. should sell such lands, whether they accept probate of the will or not. Or does the testator mean to say that A. and B. shall sell his lands only if they prove the will? Or can an intention still further be discerned, that if they renounce the person to whom administration of the personalty may be granted should have the like power of sale? To make a man mean so much more than he says is not the ordinary way in which written documents are construed. The charge of debts, and even a general direction that they should be paid, was, in favour of honesty, held, and rightly held, when lands were not otherwise subject to debts, to be equivalent to a trust for their payment, even by sale if necessary. The trust is fastened on the land; and those who take subject to such a trust have, by necessary implication, the powers requisite for carrying such trust into complete effect. C. therefore may sell, and give a discharge to the purchaser; and if C. should misapply the money, the remedy of the creditors is against him personally. But this

gives the executors no right to interfere. They, or if they renounce, the administrator, may lawfully inform C. of the deficiency of the personal estate, and request him to sell; and it seems that they, or some or one of them, may lawfully concur with C. in the receipt of the purchase money. C., however, who takes the land which is subject to the trust, must necessarily be the trustee, just as the heir of a trustee takes the trust estate subject to the trusts; or as the devisees, in whatever shape, of a trustee take, subject to the trusts, the trust estates expressly devised to them by his will.

"If a general direction by a testator, that his debts shall be paid, gives to his executors a power by implication to sell his lands, it ought to follow, *a fortiori*, that a direction that his debts shall be paid *by his executors* gives them a similar power. But, so far from this, the latter direction is held not to amount to a charge of the debts on the real estate, unless the executors are also themselves the devisees (2 Jarm. Wills, 523, 1st ed.; 506, 2nd ed.). The distinctions thus established are in exact accordance with the principles above laid down. As the executors, as such, have nothing but the personal estate under their control, a direction that the debts shall be paid by them implies no charge on the lands. But if the executors are themselves the devisees, they are bound, *as devisees*, to pay the debts out of the lands devised to them.

"The provisions of the Legislature appear to throw some light on the question. The stat. 11 G. 4 and 1 W. 4, c. 47, s. 12, enacts, that where any lands shall be devised in settlement by any person whose estate under that act, or by law, or *by his will*, shall be liable to the payment of any of his debts, and by such devise shall be vested in any person for life, with any remainder over which may not be vested, the court may direct the tenant for life to convey the fee simple to a purchaser. This act was extended to mortgages by stat. 2 & 3 V. c. 60, and to heirs, subject to an executory devise over in favour of unascertained persons, by stat. 11 & 12 V. c. 87. But if a charge of debts on the real estate gives the executor power to sell it, there was no occasion for these enactments, so far as relates to wills by which debts are charged, and the proceedings in such cases as *Walker v. Aston* (14 Sim. 87) were altogether unnecessary.

"It is true that, in most, if not all, of the decided cases, the devisee who has sold has been either the executor or one of the executors, or has sold with the concurrence of the executors or one of them. It is also true, that in *Ball v. Harris* (4 My. & C. 264) the executrix appears to have concurred with the devisee, who was also an executor, in the receipt of the money for which the property in question was mortgaged. The mortgage, however, or rather deposit, was expressed to be made by the devisee alone, the memorandum being in these words:—'I, the undersigned William Harris, sole acting *devisee* in trust of the last will and testament of Richard Ferrey, deceased, do hereby acknowledge to have deposited,' &c. (8 Sim. 490). And the Lord Chancellor in his judgment remarks, 'This case, indeed, is free from the difficulty which has occurred in some others, for Harris is devisee in trust of the legal fee; and, it being established that the will

charges the estate with the payment of the debts, it follows that Harris, *being trustee for that purpose*, must have the power of executing his trust' (2 My. & C. 267). Lord St. Leonards also gives the following account of this case:—'It may be that the devisee subject to the charge is a trustee for others, yet *he may sell or mortgage*, and give a good discharge for the purchase money, only in that case he could not assume to sell as the owner of the estate' (Concise Vendors, 521). And in his well-known judgment in *Stroughill v. Anstey* (1 De G. M. & G. 646), his Lordship, in commenting on *Ball v. Harris*, does not even mention that the trustees were also executors, but states that the testator devised his real estate to trustees in fee, upon trust for certain persons successively; and *the trustees having mortgaged*, the point raised was, &c. In like manner, Lord Cottenham in *Eland v. Eland* (4 My. & C. 428), when commenting on *Johnson v. Kennett* (6 Sim. 384; 3 My. & K. 624), remarks, 'What evidence is it of a breach of trust that a party, having such an estate subject to such a charge, sells the estate as his own? He is, in truth, the owner, subject to a charge, and it is *his duty* to satisfy the debts, which the sale may be the very means of enabling him to do.' In *Johnson v. Kennett* the devisee was also executor; but neither Lord Lyndhurst, by whom the case was decided (3 My. & K. 680), nor Lord Cottenham, in his comments on that case, nor Lord St. Leonards in his remarks on the same case in *Stroughill v. Anstey* (1 De G. M. & G. 652), thought it worth while to mention that circumstance; and the rule which the last-named eminent judge extracted from an elaborate review of the authorities is this—'that when a testator, by his will, charges his estate with debts and legacies, he shows that he means to intrust *his trustees* with the power of receiving the money' (Id. 653). Opposed to this is certainly the dictum, for it was nothing more, of Sir J. L. Knight Bruce, L. J. (when Vice-Chancellor), in *Gosling v. Carter* (1 Coll. 650), who says, '*Ball v. Harris* seems to me to involve the decision that it was the executors who were to sell, and not the devisee.' But the opinion thus expressed is founded on the argument, that if the devisee was the person to sell, he would have been the only person to receive the money; whereas, if the executors were to sell, then they were the persons to receive the money; and they did in fact receive the money (Id. 619). A right, however, to receive the money to arise from an estate when sold is not the same thing as a right to sell that estate, otherwise every person having an equitable charge on an estate to the amount of its value would have a right to sell it. This dictum, in fact, which was referred to by his Honour the Master of the Rolls, in his remarks on *Doe d. Jones v. Hughes*, is the only direct authority in favour of these remarks. For, as was observed by Alderson, B., in the latter case, 'the language of the Vice-Chancellor (Shadwell) in *Forbes v. Peacock* (12 Sim. 541) must be taken *secundum subjectam materiem*.' And the testator in that case expressly directed the property to be sold.

"In *Walker v. Smalwood* (Amb. 676), where the testator devised his estates charged with payment of debts, Lord Camden, in his judgment, said,

that the creditors had a right to call on the *heir or devisee* to execute the trust. He says nothing about the executor.

"In *Dolton v. Hewin* (6 Madd. 9), the devisee was also executrix, and yet the rule which Sir Edward Sugden, in the three last editions of his *Vendors and Purchasers*, and in his *Concise Vendors* (p. 520), lays down on the authority of that case is as follows: 'Where an estate is given to a devisee, he paying the debts, so that the words are sufficient to pass the fee; a purchaser *from the devisee* cannot be affected by any gift over of the estate for *the devisee has a right to sell* to pay the debts; and if the price of the estate is more than will satisfy the debts, the remedy of the devisees over is against the first devisee, and not against the purchaser.'

"The decision in *Robinson v. Lowater* was, as we have said, affirmed on appeal (5 De G. M. & G. 272). It is to be regretted, however, that Sir J. L. Knight Bruce, L. J., did not state any grounds for his opinion. Sir G. J. Turner, L. J., in his judgment, said, 'that it seemed to him, upon the whole scope of the will, without reference to the cases decided upon the subject, that in that case at least it was the intention of the testator that the money should be raised by the executor; and if by the executor, then the executor must be considered as invested with all the powers necessary to raise it' (5 De. G. M. & G. 277). This is a very cautious opinion, and by no means commits that eminent judge to all the doctrine laid down in the court below. The legal estate was outstanding, and the executor who sold *was himself also devisee for life*, with contingent remainders over. The nearest authority seems to be *Dolton v. Hewin*, above mentioned, on which it is submitted that the decision might perhaps be supported, as, according to that case, if the legal estate in fee had been in the vendor, subject to merely equitable remainders over, he might well have sold; and it could, it may be said, hardly make any difference that the legal estate was already in the purchaser, as happened to be the case.

"In *Wrigley v. Sykes* the legal estate was also outstanding, but it does not appear from the report of the case that this circumstance influenced his Honour's decision (2 Jur. N. S. 79); and the owners of three-fifths only of the estate were, as surviving executors, held clearly entitled to sell the whole.

"The opinions of his Honour the Master of the Rolls have found an advocate in a learned conveyancer of long standing, Mr. Clayton, who in a little work recently published, intitled '*The Elements of Conveyancing*,' expresses an opinion that we may, upon the ground of convenience, without the sacrifice of principle, give the executor in these cases the power of working out this charge or trust. The work, however, contains its own antidote in the following reasons stated by the author (p. 110) as having been advanced against his position by a learned friend, who would seem from the Preface to be no less eminent a person than Mr. Hayes, one of the conveyancing counsel of the Court of Chancery. These reasons we take leave to quote:—

"1. Executor *quâ* executor has nothing to do with the administration of the proceeds of the realty.

"2. If executor *quâ* executor, why not executor of executor, or administrator; in short, legal personal representative for the time being?

"3. If executor *not* *quâ* executor, then a bare implied authority at common-law or in equity—not within the statute of Henry VIII; and if a plurality of executors, all must join, proving and non-proving, &c.

"4. Proceeds of realty to be administered not on legal, but on equitable principles—contrary, therefore, to the ordinary course of executorial administration.

"5. If executor be the only proper hand to receive the money, payment to the executor and devisee jointly must be wrong on any principle.

"6. If executor misapply the money, he could not be charged as executor; he must be charged as trustee by implication.

"7. If no distinction between a devise upon trust to pay debts, and a devise subject to a charge of debts, then in either case the money would be payable to executor.

"8. Equity follows the law; if a charge of debts imports a power in executor to work it out, it must have the same import at law and in equity.

"9. Innumerable titles depend on the doctrine that the devisee may sell and mortgage without the executor.

"10. If a charge of debts, without more, implies a power of sale in the executor, the judicature is stultified in the numerous cases in which the question has been, whether, there being an express authority or direction to sell, the executor was the person impliedly authorised to execute it.

"These are evidently rough notes, but they contain much that is worthy of the deepest consideration by those whose duty it is to settle the principles on which the titles to landed property in this country depend. The learned author gives some replies, for which the reader is referred to the book itself. The confidence of the author appears, however, to have wavered as he proceeded, for at p. 110 he remarks, 'that the rule, however qualified, will not be without inconvenience in practice;' and he suggests, that when a testator wishes to provide for the payment of debts out of his real estate, he should make some clear and well-guarded provision for the purpose, and not rely upon a mere general charge. In this suggestion the writer, in the present state of the authorities, most heartily concurs. Since the above was written, the writer has been gratified to find, from the *Weekly Reporter* of last Saturday (p. 280), that in *Eitesford v. Armstead*, before Sir W. P. Wood, V.C. on the 31st January, 1856, that most eminent equity judge has taken the view above suggested of the case of *Robinson v. Lowater*. 'The case of *Robinson v. Lowater*,' says his Honour, 'is an authority that you must look to the parties having the ownership of the estate at the time, and they are the persons who would have to apply the fund under the power given to raise the charge.' "We now arrive at the remarks to which we referred at the commencement as having been made by the late Lord Chancellor (Cranworth). These will be found in the

case of *Colyer v. Finch*, in the House of Lords (26 L. J. Ch. 69); which, however, related mainly to a question of priority between mortgagees. His Lordship observed: "The cross-bill filed by Mr. Colyer, the subsequent purchaser, raised two points; he asserted priority, as claiming under a purchase made by the executors to raise money for the purpose of enabling them to perform the trusts, so that at least he had a preferable title over any one else to the extent of the money which was thus raised. That was his contention; but it did not appear to be entirely well founded. Though executors might, under such circumstances, have impliedly a power as against the *heir-at-law* to convey the legal estate in order to raise the money, that did not apply to a case in which there were *devisees of the estate*, which was charged in their hands with the payment of debts and legacies; *there the devisee alone could convey a good title to the estate.*" Should this opinion be acquiesced in, as there is reason to believe it is, the matter seems set at rest, but it is to be remembered, that it was not the point actually decided, and therefore amounts but to a *dictum*.

Our readers will, of course, bear in mind the provisions of Lord St. Leonards' Act (*ante*, p. 327), which, however, apply only to wills *coming into operation after the passing of that act*, by which a devisee in trust of the whole of the testator's interest, charged with debts or legacies, may raise the same either by a sale or mortgage, and this is extended to the survivors and the heirs or devisees of such survivor, and to trustees appointed under a power or by the Court of Chancery. And if the whole of the testator's interest did not vest in any trustees, the executors, either original or by devolution, may raise the money in the same way; but these powers do not extend to beneficial devisees of the testator's whole interest (*see ante*, pp. 327, 328). It is greatly to be regretted that the act does not apply to wills operating before the passing of the act.

VILLEINAGE IN ENGLAND.

Possibly, Englishmen are not generally aware that slavery once existed in their own country, and that all traces of its existence only vanished within a recent period. Vestiges of slavery, in the modified form of *villeinage*, are to be found in England as late as the reigns of Elizabeth and James I., and in Scotland (in some special cases) down to very nearly the end of the last century. Slaves were once bought and sold in England as naturally as they still are in Carolina. And what is more, slavery was never abolished in England, it having gradually died out, under the operation of several laws which tended to ameliorate the condition of the slave and to promote his emancipation.

Before the Norman conquest, and for some time after, slavery existed in its most unmodified form. Englishmen and English women were bought and sold like sheep or negroes. The slave class was replenished from two

sources; prisoners of war, chiefly Welsh, and Englishmen reduced to slavery as a punishment for certain crimes. The effect of the Conquest seems to have been to mix up the actual slaves and the free peasantry into the single class of *villeins*, whose state was something between slavery and freedom. Something analogous to villeinage strikes us as the natural transition from one state to the other.

The villein appears to have been at first the absolute property of his lord, capable of being sold separately like any other chattel, and incapable of acquiring property of his own. He gradually rose to the condition first, of a predial serf, attached to the soil, and then of a modified sort of landowner. Pieces of land were held by villeins at the pleasure of their lords. But the lord's pleasure was gradually modified by local and other customs, till it was held that he could not dispossess the tenant, so long as he discharged the conditions of his tenure. Villein tenures were even frequently held by men personally free. They ultimately grew into copyholds, a species of tenure often really as valuable as freehold, but which, down to the Reform Bill, carried a badge of servitude in its not conferring the elective franchise.

Now, there was this main difference between English villeinage and American slavery, that even while the villein remained a personal chattel, his condition was merely relative to his lord. To the rest of the community he was the same as a freeman. He might sue and be sued, he might be a witness, except against his lord, and act in every respect like any one else. To be sure any property he acquired was by his lord's sufferance, but he was safe against the rest of the world. For murder or other extreme injury to his villein the lord might be prosecuted; but the villein's property was the lord's. It is clear, however, that the merely relative character of villeinage made an enormous difference. Protected by the law against every one but the lord, and partially by the lord also, he had made considerable steps towards freedom.

The fugitive slave law of England was widely different from that of America. If a villein ran away, his lord might reclaim him; but how? Only by a legal process, in which the court was bound to assume the freedom of the person claimed till the lord could prove his villeinage. If the villein could live unclaimed for a year and a day in a corporate town, the lord's claim was barred for ever. We read of one case in which a lord reclaimed eighteen fugitive villeins; in the case of twelve his claim seems to have been allowed; but six were saved from bondage by proving a sufficient residence in the city of Norwich.

The villein was in no way debarred from lawful matrimony. He might contract marriage with any person, bond or free. In either case, the children followed their father's condition. Moreover, a bastard was necessarily free, though born of a slave mother. The bastard, it was held, could inherit nothing; but in such a state of things the disqualification cut both ways. The illegitimate offspring of the higher class could not inherit their

advantages; but neither could the illegitimate offspring of the lowest class inherit their disadvantages.

Finally, there was no restriction on emancipation. To set free a villein was held to be a meritorious act which the clergy held up to the imitation of the living or dying sinner. It seems at first sight inconsistent that villeinage existed on church lands longer than anywhere else except on those of the Crown. But the explanation doubtless is, that the individual possessor had a mere usufruct or life interest, and would have deemed himself as little capable of alienating the villeins as the lands they cultivated. As we have seen, liberty could, in many cases, be obtained by mere prescription. In legal strictness the villein could not purchase his freedom because all he had was at the lord's mercy. But it was usual to allow him to do so by a legal fiction, the price being nominally paid by a third person.

By the combined operation of these laws, villeinage gradually died out in England. In the sixteenth century, it only existed on some crown lands, where Queen Elizabeth allowed the villeins to redeem themselves. Every individual villein became free, but the institution of villeinage was never abolished. When Lord Holt gave judgment against slavery, he distinctly reserved the possibility of villeinage. "In England," he said, "a man may be a villein but not a slave." We conceive that there is nothing now to hinder any man being adjudged to be a villein, except the extreme improbability of the lord being able to make out his claim. The thing is gone; the name only remains in a secondary sense.

Granting the original evil of bondage in any form—and it is an evil which has visited in some stage or other every nation—we know nothing more honourable to the English law than its constant efforts to mitigate the condition of the bondman; and we owe this much more to the lawyers than to the law makers. Parliaments, which of course represented the villein-holding interest, often passed illiberal statutes, which the kings not unfrequently rejected, and of which the judges made a dead letter.

Recent Statutes.

STATUTES OF 22 & 23 VICTORIA.

(*Continued from p. 339*).

CAP. XLIX. POOR LAW BOARDS, PAYMENT OF DEBTS.

This act provides for the payment of debts incurred by boards of guardians in unions and parishes, and boards of management in school districts, and it contains one provision of importance to solicitors, as will be seen by sec. 5.

SEC. 5. *Payment of attorney's bills, delay of.*—Where the guardians or managers shall be engaged in a suit, action, or proceedings in any court,

they shall not be required by any rule of law or provisions herein contained to pay the bill of costs of any solicitor or attorney retained by them for the purpose thereof until the final determination of such suit or proceeding, or until he shall cease to be so retained by or for them therein; but the bill of costs of such solicitor or attorney shall be duly taxed and paid within the term of one year next after such final determination of the said suit, proceeding, or retainer, and not afterwards, unless the Poor Law Board shall authorise an extension of time not exceeding six months; provided that if the said solicitor or attorney take proceedings for the recovery of his bill within such time or the extension thereof, he shall in such case have the same right to be paid as in sec. 4; provided also, that nothing herein contained shall prevent the guardians or managers from paying money at any time on account of the suit or proceeding.

CAP. LVI. WEIGHTS AND MEASURES.

This is an act to amend the 5 & 6 W. 4, c. 63, relating to weights and measures.

SEC. 2. *Penalty for making and selling false beams and scales or weights and measures.*—No person shall wilfully or knowingly make or sell, or cause to be made or sold, any false or unjust beam, scale, or balance, or any light or unjust weight or measure; and every person who shall commit any such offence shall upon being convicted thereof forfeit and pay any sum not exceeding £10 as shall be adjudged by the justice, sheriff, or magistrate before whom any such conviction shall take place.

SEC. 3. *Power to inspectors to inspect beams, scales, &c., in possession of persons selling in the public streets.*—It shall be lawful for every inspector of weights and measures, or other person or persons duly appointed to inspect weights and measures, at all reasonable times to inspect all beams, scales, and balances, and weights and measures, in the possession of any person selling, offering, or exposing for sale any goods on any open ground, or in any public street, lane, thoroughfare, or other open place; and if upon such inspection or examination any such beams, scales, or balances, or weights or measures, shall be found light or unjust, or otherwise contrary to the provision of this act or the hereinbefore recited act, or if any fraud be wilfully committed in the using thereof, the same shall be liable to be seized and forfeited, and the person or persons using or having in his or her possession any such false or unjust beams, scales, or balances, or light or unjust weights or measures, shall be liable to any penalty not exceeding £5. By sec. 4, municipal corporations are to appoint inspectors of weights and measures. By sec. 5, the measures may be made partly of glass, &c., and by sec. 6, the owners of markets are to provide beams, scales, &c.

SEC. 7. *Powers to clerks of markets to inspect goods sold, &c., and if weighing found deficient to summon the offender.*—It shall be lawful for every clerk or toll collector of any public market, at all reasonable times, to weigh or measure all goods sold, offered, or exposed for sale in any such market: and if upon such weighing or measuring any such goods shall be

found deficient in weight or measure, or otherwise contrary to the provisions of this act or the hereinbefore recited act, every such clerk or toll collector is hereby authorised and required to summon the person selling, offering, or exposing for sale, or causing to be sold, offered, or exposed for sale, any such goods before any justice, sheriff, or magistrate having jurisdiction in the county or district where any such market is situate; and every such justice, sheriff, or magistrate shall, upon proof thereof, convict the offender or offenders in the respective penalties by this act or the said recited act imposed, and shall from time to time award to any such clerk or toll collector such reasonable remuneration (to be paid out of the said penalties) as to him shall seem fit.

SEC. 8. *Penalties.*—For every offence against or disobedience to the provisions of this act or the hereinbefore recited act for which no special penalty is provided, the offender shall, at the discretion of the justice, sheriff, or magistrate before whom any such conviction shall take place, be liable to any penalty not exceeding £5, as shall be adjudged by such justice, sheriff, or magistrate.

CAP. LVII. IMPRISONMENT FOR SMALL DEBTS—COUNTY COURTS.

The provisions of this statute will be found, *ante*, pp. 270, 271.

CAP. LIX. RAILWAY COMPANIES ARBITRATION.

This is an act to enable railway companies to settle their differences with other companies by arbitration. It contains many clauses for carrying out the reference.

SEC. 2. *Power for railway companies to refer matters to arbitration.*—Any two or more railway companies, whether already or hereafter incorporated (in this act called “the companies”), from time to time, by writing under their respective common seals, may agree to refer and may refer to arbitration, in accordance with this act, any then existing or future differences, questions, or other matters whatsoever in which they then are or thereafter shall be mutually interested, and which they might lawfully settle or dispose of by agreement between themselves, and may delegate to the person or persons to whom the reference is made any power to determine all or any of the terms of any contract to be made between the companies which the directors of the companies respectively might lawfully delegate to any committees of themselves respectively.

SEC. 3. *Power to alter or revoke agreements for reference.*—The companies jointly, but not otherwise, from time to time, by writing under their respective common seals, may add to, alter, or revoke any agreement for reference in accordance with this act theretofore entered into between the companies, or any of the terms, conditions, or stipulations thereof.

SEC. 4. *Agreements to be carried into effect.*—Every reference or agreement in accordance with this act, except so far as it is from time to time revoked or modified in accordance with this act, shall bind the companies, and may and shall be carried into full effect.

SEC. 5. *Reference to a single arbitrator.*—Where the companies agree, the reference shall be made to a single arbitrator.

SEC. 6. *Reference to two or more arbitrators.*—Except where the companies agree that the reference shall be made to a single arbitrator, the reference shall be made as follows; to wit,

Where there are two companies, the reference shall be made to two arbitrators:

Where there are three or more companies, the reference shall be made to so many arbitrators as there are companies.

SEC. 7. *Appointment of arbitrators by companies.*—Where there are to be two or more arbitrators, every company shall by writing under their common seal appoint one of the arbitrators, and shall give notice in writing thereof to the other company or companies.

SEC. 8. *Appointment of arbitrators by Board of Trade.*—Where there are to be two or more arbitrators, if any of the companies fail to appoint an arbitrator within fourteen days after being thereunto requested in writing by the other company, or by the other companies or any of them, then, on the application of the companies or any of them, the Board of Trade, instead of the company so failing to appoint an arbitrator, may appoint an arbitrator; and the arbitrator so appointed shall for the purposes of this act be deemed to be appointed by the company so failing.

CAP. LXI. DIVORCE COURT.

This act makes further provision as to the Court for Divorce and Matrimonial Causes.

SEC. 1. *Judges of the Queen's Bench, &c., to be judges of the Court for Divorce.*—In addition to the judges mentioned in section eight of the said act, all the judges for the time being of the Courts of Queen's Bench, Common Pleas, and Exchequer respectively, not already made judges of the Court for Divorce and Matrimonial Causes, shall be judges of such court.

SEC. 2. *Judge ordinary and eight of the other judges to appoint the sittings of the full court.*—The judge ordinary of the said court, and eight or more of the other judges thereof, shall, from time to time, by general orders for this purpose, appoint so many sittings of the full court in every year, and at such times as may appear to them necessary or convenient for disposing of the matters arising in the said court which may not be heard and determined by the judge ordinary alone; and the judges of the said court shall, by a rota or otherwise, as they may deem most convenient, make provision for the attendance of the requisite number of judges to make a full court at the times so appointed for the sittings of the full court.

SEC. 3. *Precedence of the judge ordinary.*—The judge ordinary shall have place and precedence in the said court next after the Lord Chief Baron of her Majesty's Court of Exchequer.

SEC. 4. *The court may make orders as to custody of children after a final decree of separation*—20 & 21 V. c. 85.—The court, after a final decree of judicial separation, nullity of marriage, or dissolution of marriage, may upon application (by petition) for this purpose make, from time to time, all

such orders and provisions with respect to the custody, maintenance, and education of the children the marriage of whose parents was the subject of the decree, or for placing such children under the protection of the Court of Chancery, as might have been made by such final decree or by interim orders in case the proceedings for obtaining such decree were still pending; and all orders under this enactment may be made by the judge ordinary alone or with one or more of the other judges of the court.

SEC. 5. *As to marriage settlements of parties after final decree of nullity of marriage.*—The court, after a final decree of nullity of marriage or dissolution of marriage, may inquire into the existence of ante-nuptial or post-nuptial settlements made on the parties whose marriage is the subject of the decree, and may make such orders with reference to the application of the whole or a portion of the property settled either for the benefit of the children of the marriage or of their respective parents as to the court shall seem fit.

SEC. 6. *On a petition by wife on account of adultery, &c., both husband and wife competent, &c., to give evidence.*—On any petition presented by a wife, praying that her marriage may be dissolved by reason of her husband having been guilty of adultery coupled with cruelty, or of adultery coupled with desertion, the husband and wife respectively shall be competent and compellable to give evidence of or relating to such cruelty or desertion.

SEC. 7. *Extension of right of appeal to House of Lords.*—The right of appeal to the House of Lords, given by the fifty-sixth section of the recited act, shall extend to all sentences and final judgments on petitions under the Legitimacy Declaration Act, 1858.

CAP. LXIII. LAW ASCERTAINMENT FACILITIES ACT.

This act affords facilities for the more certain ascertainment of the law administered in one part of her Majesty's dominions when pleaded in another part thereof.

SEC. 1. *Courts in one part of her Majesty's dominions may remit a case for the opinion in law of a court in any other part thereof.*—If, in any action depending in any court within her Majesty's dominions, it shall be the opinion of such court that it is necessary or expedient for the proper disposal of such action to ascertain the law applicable to the facts of the case as administered in any other part of her Majesty's dominions on any point on which the law of such other part of her Majesty's dominions is different from that in which the court is situate, it shall be competent to the court in which such action may depend to direct a case to be prepared setting forth the facts, as these may be ascertained by verdict of a jury or other mode competent, or may be agreed upon by the parties, or settled by such person or persons as may have been appointed by the court for that purpose in the event of the parties not agreeing, and upon such case being approved of by such court or a judge thereof, they shall settle the questions of law arising out of the same on which they desire to have the opinion of another court and shall pronounce an order remitting the same, together

with the case, to the court in such other part of her Majesty's dominions, being one of the superior courts thereof, whose opinion is desired upon the law administered by them as applicable to the facts set forth in such case, and desiring them to pronounce their opinion on the questions submitted to them in the terms of the act; and it shall be competent to any of the parties to the action to present a petition to the court whose opinion is to be obtained, praying such last-mentioned court to hear parties or their counsel, and to pronounce their opinion thereon in terms of this act, or to pronounce their opinion without hearing parties or counsel; and the court to which such petition shall be presented shall, if they think fit, appoint an early day for hearing parties or their counsel on such case, and shall thereafter pronounce their opinion upon the questions of law as administered by them which are submitted to them by the court; and in order to their pronouncing such opinion, they shall be entitled to take such further procedure thereupon as to them shall seem proper.

SEC. 2. *Opinion to be authenticated and certified copy given.*—Upon such opinion being pronounced, a copy thereof, certified by an officer of such court, shall be given to each of the parties to the action by whom the same shall be required, and shall be deemed and held to contain a correct record of such opinion.

SEC. 3. *Opinion to be applied by the court making the remit.*—It shall be competent to any of the parties to the action, after having obtained such certified copy of such opinion, to lodge the same with an officer of the court in which the action may be depending, who may have the official charge thereof, together with a notice of motion, setting forth that the party will, on a certain day named in such notice, move the court to apply the opinion contained in such certified copy thereof to the facts set forth in the case hereinbefore specified, and the said court shall thereupon apply such opinion to such facts, in the same manner as if the same had been pronounced by such court itself upon a case reserved for opinion of the court, or upon special verdict of a jury; or the said last-mentioned court shall, if it think fit, when the said opinion has been obtained before trial, order such opinion to be submitted to the jury with the other facts of the case as evidence, or conclusive evidence as the court may think fit, of the foreign law therein stated, and the said opinion shall be so submitted to the jury.

SEC. 4. *Her Majesty in council or House of Lords on appeal may adopt or reject opinion.*—In the event of an appeal to her Majesty in council or to the House of Lords in any such action, it shall be competent to bring under the review of her Majesty in council or of the House of Lords the opinion pronounced as aforesaid by any court whose judgments are reviewable by her Majesty in council, or by the House of Lords; and her Majesty in council or that house may respectively adopt or reject such opinion of any court whose judgments are respectively reviewable by them, as the same shall appear to them to be well founded or not in law.

SEC. 5. *Interpretation of terms.*—In the construction of this act, the

word "action" shall include every judicial proceeding instituted in any court, civil, criminal, or ecclesiastical; and the words "superior courts" shall include, in England, the superior courts of law at Westminster, the Lord Chancellor, the Lords Justices, the Master of the Rolls or any Vice-Chancellor, the Judge of the Court of Admiralty, the Judge Ordinary of the Court for Divorce and Matrimonial Causes, and the Judge of the Court of Probate; in Scotland, the High Court of Justiciary, and the Court of Session acting by either of its divisions; in Ireland, the superior courts of law at Dublin, the Master of the Rolls, and the Judge of the Admiralty Court; and in any other part of her Majesty's dominions, the superior courts of law or equity therein.

CAP. LXV. SESSIONAL DIVISIONS.

This act amends the acts for the better regulation of divisions in the several counties of England and Wales. It recites the 9 G. 4, c. 43, the 10 G. 4, c. 46, and the 6 & 7 W. 4, c. 12, and recites, "whereas doubts have arisen whether under the first of the said acts the justices therein mentioned are empowered to divide any parish, tything, township, or place, for the purpose of including any part or parts thereof respectively in any division constituted under the said acts, or any or either of them."

SEC. 1. *Justices may divide parishes, &c., for constituting divisions of counties.*—It shall be lawful for the said justices, if they shall think fit, to divide any parish, tything, township, or place for the purpose of altering or constituting such divisions, and after any order of the said justices for altering or constituting any division under the said acts shall have taken effect, the part or parts of any parish, tything, township, or place included in any division altered or constituted by such order shall be deemed and taken to be part of such division for all the purposes of the said acts, but not further or otherwise.

SEC. 2. *Court to make order in respect of the appointments and duties of officers.*—Whensoever the court of quarter sessions shall, under the provisions herein or in the said recited acts contained, make an order for dividing any parish, tything, township, or place for the purpose of altering or constituting such divisions as aforesaid, and it shall appear to the court that any inconvenience may arise therefrom in or respecting the appointment or duties of any bailiffs, constables, or tythingmen, surveyors, overseers of the poor, or other officers or persons, the court of quarter sessions shall or may, at the same or at any future sessions, make such order in respect of the said appointments and duties as the court shall deem necessary or expedient.

CAP. LXVI. SALE OF GAS.

The provisions of this statute will be found *ante*, pp. 269, 270.

NATURALISATION OF FOREIGNERS.

There has been a good deal of discussion lately respecting the nature and working of the English law of naturalisation, the conditions it requires, the duties it imposes, the privileges it confers. It is flattering to us that foreigners should feel an anxiety to secure for themselves the advantages of British citizenship; and it is creditable that we grant them with no niggard hand. Once arrived here, the career of a British citizen is open to them. They are at once put into the possession of the advantages that belong to our countrymen, and they may aspire to the immunities and the honours which citizenship confers. While they reside here they are safe, and if the bent of their mind beats in that direction, they may be publicly useful, and may rise to civic dignity.

Such are a few of the rights which the naturalisation in this country of an alien confers. We freely grant they are no more than all foreigners are entitled to who put themselves under the protection of our laws, so long as they reside among us. But there is a claim now made to extend the rights of British citizenship still farther, and to invest the alien with the advantages they impart, not only while he resides among us, but after he has chosen to leave the asylum here provided for him. Foreigners have made it a matter of complaint that our Government will only grant them the security of our protection while they reside on our soil. While the shield of England's power follows a British-born subject to the ends of the earth, a foreigner, whatever forms of naturalisation he may have gone through, is abandoned to his own resources as soon as he quits her Majesty's dominions. In England, and on English soil, he is allowed to call himself and is treated as an Englishman. But in a foreign country his English rights drop off; he is an alien and a foreigner again; and if he fall into trouble, or incur the resentment of foreign states, this country will take no account of him: his appeal for protection passes unheeded. This kind of naturalisation a class of foreigners among us complain of as a delusion practised upon them, a pretended conveyance of benefits which have no real existence, a naturalisation which is not worth having.

It may seem harsh to say so, but we confess, on a full examination of the question, our Government seems to us to have decided wisely in making residence on British territory a condition of enjoying naturalisation, and that foreigners have no real reason to complain. We except, of course, those rare cases where a foreigner has first of all, with the full consent of his original Government, stripped himself of all the rights of citizenship he acquired in the land of his birth—respecting their treatment no complaint is made. But it is obvious the bulk of foreigners residing here have not, and probably would not, be allowed to go through such a denationalising process; and to these only the question applies. Now, it is a well-known and a fundamental maxim in constitutional law that a British-born subject cannot, under any circumstances, divest himself of his allegiance; he may

live where he pleases; he may acquire certificates of naturalisation from every country on the face of the earth; but he is still a citizen of the realm; and a subject of the Crown of England, and if found in arms against her, no length of absence nor rights of foreign citizenship would avail to save him from a traitor's doom. Such is the law of England. Could we with consistency plead any other law against a foreign country who should seize upon one of her subjects whom we had naturalised? With what face could we tell them that they had less right to the allegiance of their subjects than we demand from ours? How would a British Minister tell France, or Prussia, or Austria, that while an Englishman remained an Englishman, wherever he might go, or however long he might absent himself, yet a Frenchman, or a Russian, or an Austrian was held to his country by looser bonds, and by the mere circumstance of residing within these lands had acquired rights and privileges which enabled him to set his native country's laws at defiance. The truth is, the adoption and still more the enforcement of such a principle would lead us into scrapes innumerable. The true theory of our dealing with the foreigners is simple and intelligible. The refuge of our shores is open to all. No question is asked of an exile's antecedents, provided only that he has not been guilty of fraud or felony; with these exceptions all refugees are welcome, and so long as they obey our laws they are safe. If they choose to commence a new career in this country, the privilege is not denied them. They may buy and sell, build and plant, serve the State, and enjoy its honours. But if they choose to leave the refuge, it is at their own risk. We protect them while they remain; if they leave, it is to be presumed they have found other protection; our obligation ceases with their residence. To lay down any other principle would be at variance with our own law, and would involve us in endless violations of the great principles of non-interference with foreign States.

Vendors and Purchasers.

LEGACIES CHARGED ON LANDS.—*On a devise of "residue" after gift of legacies.*—We propose to notice at some length the case of *Greville v. Browne* (7 W. R. 673; 84 Law Tim. 9), on the effect of a devise of residue after a gift of legacies. Mr. Dart (*Vendors*, p. 399, 3rd ed.) says, "It may be useful here to remark, that, under a gift of a residue of real and personal estate in a will bequeathing legacies, such legacies are held to be charged on the real as well as on the personal estate, although real estate has been previously devised, and so also as to debts" (*Bench v. Biles*, 4 Mad. 187; *Francis v. Cl.*, 1 K. 435; *Gallimore v. Gill*, 2 Sm. & G. 158; *Carter v. Sa.*, 2 Dre. 248). The case of *Greville v. Browne* (sup.) bears out the above statement (Lord Wensleydale, however, dissenting from the doctrine). It appeared, that B. by will bequeathed to M. B. £1000, and to A. B. £5000,

and "as to all the *rest* of my real and personal property, I bequeath and devise the same to my son Michael in the fullest manner I can, with liberty to him to dispose of the same as he thinks proper." Michael having afterwards mortgaged the real estate—Held (affirming the decision of the Lords Justices in Ireland), that the legacies were well charged on the real estates devised to Michael, and that there was no power to Michael to sell the land discharged from the legacies (*Greville v. Br.*, 34 Law Tim. Rep. 8). As the doctrine itself is so important, and affects (we fear) many existing titles which have been accepted in ignorance thereof (being as we consider a very forced and technical rule, and in that we are supported by Lord Wensleydale, whose views, however, we do not give, as the point is now too clearly settled to be open to objection), we propose to give the judgment of the present Chancellor (Lord Campbell), and the late Chancellor (Lord Cranworth). Lord Campbell said: "The first question is, whether these legacies are a charge upon the real estate. If it were *res integra*, and we had to construe this will by the language employed, without any reference to the construction which has been put upon similar language in other wills, I should allow that there is great force in the very able and ingenious argument we have had from the bar. It might well be supposed that the testator had no notion whatsoever of charging the land with these legacies, but we find that from the time of Lord Macclesfield and Lord Cowper down to the time of Lord Cottenham and Vice-Chancellor Page Wood, a rule has prevailed upon this subject, which has been acted upon uniformly by all judges except one, Lord Alvanley—a very eminent authority (I do not mean in the slightest degree to disparage him), but with that exception by all the judges that have determined such cases for nearly a century and a half this rule has been laid down and acted upon, that if there be a general gift of legacies, and then the testator gives the rest and residue of his property, real and personal, the legacies are to come out of the realty. It is considered that the whole is one mass—that part of that mass is represented by legacies, and that what is afterwards given is given *minus* what has been before given, and therefore given subject to the prior gift. That seems to me to be the view which was taken in the case before Lord Cowper, and in the case before Lord Macclesfield. The language in which it is expressed varies from time to time, but still that rule seems to have been uniformly acted upon, and I would say, in the language of Wood, V. C., in the last case upon the subject, *Wheeler v. Howell*, that in the present case 'I feel that I should be only introducing a useless and mischievous distinction if we held the legacy not to be a charge, the principle of the decision being, in truth, the same in the case of legacies as in that of debts.' I therefore, my Lords, conceive it to be unnecessary to travel over and criticise that long series of cases which seems to establish that rule as a general rule that must be acted upon, that the testator, in using this language in his will, must be supposed to use it according to the sense in which the words have uniformly been construed, and to mean that the legacies should be a charge upon the real estate. Here the testator gives

the legacies generally, and then he says, 'as to all the rest, residue and remainder of any property I may die possessed of or entitled to, of what nature soever, whether estates, freehold leases, leases for years, stocks of every kind, also bills, bonds, notes, annuities, or otherwise, I hereby bequeath, devise, give and grant the same to my first object on earth, my son Michael Joseph Browne, in the fullest manner I can.' It is quite clear that here there is first a general gift of legacies, and then there is a disposition of the rest, residue and remainder of the property real and personal, of what nature soever, to his son. Therefore, following the rule which has been so long acted upon, these legacies are clearly charged upon the real estate. Then, my Lords, as to the second point, the discharge of twenty-one years after the death of the testator his son mortgaged the land for £50,000, and it is allowed that upon the face of the deed there is no reference whatsoever to those legacies. No part of the legacies was paid; and I presume that after he had thus charged the land with the legacies, unless there was some special power in the will enabling the son to sell the land discharged from the legacies, it can hardly be supposed that what has taken place can amount to a discharge of the burden that was placed upon the land in respect of the legacies. No authority has been quoted to show that this power exists. Is there, then, here any such special power? I am of opinion that the words that follow what I have read are mere surplusage. They merely express what would otherwise be implied. This testator is fond of a florid style; he deals in superlatives; he is very rhetorical, and he makes use of a great many more words than would be sufficient to accomplish his purpose. He says, 'I hereby devise, bequeath, give and grant the same to my first object on earth, my son Michael Joseph Browne, in the fullest manner I can or shall have it in my power, with liberty to him to dispose of the same in any way he may think proper.' We are now considering whether the lands have been discharged of the legacies. We must consider that they are charged with them. Then he having thus charged the land, did he mean by these words to give his eldest son the power of disposing of the land at any time, so that the younger children would be deprived of the security which he had before provided for them? I think that no such meaning can be educed from the language he employs; and that therefore this mortgage has not the effect of discharging the land of these legacies. My opinion is, that this appeal should be dismissed and the decree affirmed."

Lord Cranworth said: "I concur that if there had not been a single decision upon this subject, if I were only called upon to say what is the meaning of such a devise, according to the natural meaning of the words, and knowing by what class of persons they are written, I should not have the least doubt in the world that nine persons out of ten would mean exactly what the cases have interpreted the words to mean. The distinction that is suggested between real and personal property is an artificial part of the case. It is perfectly true that we know how differently real property and personal property are dealt with by our law. And in reading a devise of real estate to one person, and of personal legacies to another,

and of the rest and residue of the real and personal property to a third, we may see that there might be a mode of interpreting it *reddendo singula singulis*—meaning to give the rest of the personal property to one person, and the rest of the realty to another. But that is not the natural meaning of the words. I feel the force of something that was said by Sir John Leach—not in the case in *Maddock*, but in a subsequent case—where with reference to the words ‘the rest and residue of my real and personal estate,’ he says that the rest and residue mean something after something has been deducted. After what has been deducted? Why, that which has been given before; and that appears to me to solve the whole difficulty. The Attorney-General, in his very able argument, tried to point out a distinction which exists in some of the earlier cases, for the purpose of showing that the generality of the rule as laid down in the more modern cases was not warranted by those earlier decisions; and he refers particularly to the case of *Awbrey v. Middleton* as being the earliest—which, as far as I know, is the earliest case upon the subject—and he endeavoured to distinguish that case by the circumstance that the legacies there were directed to be paid by the executor, and the gift of the general residue of the realty and personalty was to the executor. He is perfectly correct in that; but it is a singular thing that not only does Lord Cowper not put his decision upon that, but the argument of the counsel at the bar, adverting to the circumstance of the direction of the legacies to be paid by the executor, actually puts it as an argument for the contrary result, and says that, inasmuch as the legacies were to be paid by the executor, that shows that they were to be paid only out of the personal estate. In truth, in *Awbrey v. Middleton*, the real question as I understood it was, whether, under the gift of ‘all the rest and residue of his goods and chattels and estate,’ real estate was meant to be included. There had been a previous gift in the will of a particular real estate, and the question seemed to turn upon this, whether the word ‘estate’ there was to be held to include real estate; and Lord Cowper said that inasmuch as he begins by saying, ‘As to all my worldly estate I give in manner following,’ the word ‘estate’ was to be taken to include real estate. But he does not put it at all upon the fact of the direction to the executor, who was his nephew and sole residuary legatee. What he says is this: ‘Now the words (rest and residue) in this place may have some stress laid upon them, and seem to refer to the introductory clause in the will (as to all his worldly estate, &c.), which certainly extend to lands in a will, and will bear a larger construction by reference to the first clause, by which he intimates that he intended to dispose of all his estate, both real and personal, by his will; and therefore he was of opinion that, by the devise of all the rest and residue of his goods, chattels, and estate, all his lands do pass to his executor, and that he takes by the will, and not by descent as heir-at-law.’ Then, with regard to the decision of *Bench v. Byles*, before Sir John Leach, the Attorney-General endeavoured very ably, to distinguish it from the present case. It appears to me to be utterly undistinguishable. It is true that, in that case, the blending of the real

estate with the personal took place during the life of the widow, who took the whole during her life. What difference does that make? The testator gives all his real and personal estate to his wife for life, he gives pecuniary legacies and all the rest, residue, and remainder of his real and personal estate he gave, devised and bequeathed to his two nephews. How is the effect of that altered by the fact that there had been a previous life-estate before the pecuniary legacies took effect? That authority was followed by the same learned judge in *Cole v. Turner*, when he was at the Rolls, and which has been evidently followed by Lord Cottenham in *Mirehouse v. Scaife*, and it has been since followed in two reported cases by Wood, V.C. And I feel perfectly confident that if we could know the quantities of property that have been distributed, of which there is no report, in reliance upon the rule of construction laid down by these decisions, we should feel that we were doing the greatest possible injustice if we were to swerve in the slightest degree from what I consider to be the settled canon of construction. I therefore concur with my noble and learned friends that the judgment below ought to be affirmed."

SPECIFIC PERFORMANCE.—*Sir Hugh Cairn's Act—Sub-leases.*—A plaintiff will not be entitled to damages in equity for the non-performance of an act of which, *prima facie*, he might have obtained specific performance, after he himself has done some act which disentitles him to specific performance. A person agreeing to take a sub-lease impliedly stipulates to take subject to the same covenants as the lessee. *Collins v. Stuteley*, 7 Week. Rep. 710.

SPECIFIC PERFORMANCE.—*Damages—Sir Hugh Cairn's Act.*—Courts of equity do not enforce specifically ordinary contracts for the sale of goods, or for the loan of money. It has accordingly been held by the Master of the Rolls, that the court has no jurisdiction under the Chancery Amendment Act, 1858, or otherwise, to decree specific performance of a contract to take a loan of money, or to award damages in respect of it. *Rogers v. Challis*, 7 Week. Rep. 710.

SPECIFIC PERFORMANCE.—*General principles—Building contract.*—"It is unnecessary to consider how far courts of equity will entertain a suit for the specific performance of a building contract; the general principle upon which specific performance is decreed is, that whereas at common law damages only could be given, a court of equity, in cases where damages would be inadequate to the injury, give relief" (per Kindersley, V. C. in *Seawell v. Webster*, 7 W. R. 692).

Summary of Decisions.

CONVEYANCING AND EQUITY.

DECREE.—*Separate account—Erroneous order—Bill of review—Joint tenancy.*—A bill of review is proper when new matter is discovered which

alters the grounds for the former decision of the court, and all bills of review are with respect to decrees determining the rights of the parties. An order to carry a fund to the separate account of A. is not equivalent to a decree that A. is absolutely entitled, and if erroneous, may be corrected without bill of review. Where a person complains of orders of the court, who has not been an original party to the suit by a paramount right, he ought to bring an original bill, and not a bill of review. When property is left to a class of children simpliciter, they take as joint tenants, and not as tenants in common. *Noble v. Stow*, 7 Week. Rep. 709.

FEME COVERT.—*Her equity to a settlement—Husband and wife living together, but husband not able to maintain her.*—In general, the court will not give the whole of a considerable fund to a feme covert whose husband has assigned her choses in action, unless he has deserted her. But this is not an inflexible rule, for though there be no desertion, yet if the whole fund will not be more than sufficient to provide the wife with reasonable means of support, it will be given to her. This, in effect, makes such a property no security at all. In the following case, a wife joined in the assignment of her reversionary interest in a fund to satisfy a debt due from her husband, and the assignee became entitled in possession. It appeared that the husband, though living with the wife, was unable to afford her any means of support, and the interest of the money, together with other property of the wife, was not more than sufficient to maintain her. Upon the petition of the wife, the court ordered the whole fund to be settled. *Re Welchman*, 33 Law Tim. Rep. 377.

FEME COVERT.—*Separate estate in husband's hands—Gift to husband.*—Where a capital sum of money is given for the separate use of a wife, without the intervention of a trustee, and the amount is paid to the husband, he is, unless there is evidence of intention on the part of the wife that the husband should employ the money for his own use, or for the use of any other person, or for the joint use of the husband and wife, or for the family expenditure, or in any way that he may please, bound to hold it for the separate use of the wife (*Rich v. Cockell*, 9 Ves. 369). In 1838, a legacy of £1,000, bequeathed to a married woman for her separate use, was paid to her, and shortly afterwards, with her assent, came into her husband's hands, was paid by him to his bankers, mixed with his own money, and employed partly in business, and partly in family expenditure. There was no evidence to show whether the wife intended that it should be a gift to her husband or not. The husband died in 1858, intestate, leaving his wife surviving: Held, that she could not claim the sum out of her husband's estate. *Gardner v. Gardner*, 7 Week. Rep. 692.

PUBLIC COMPANY.—*Winding-up—Call—Illegal debts.*—There is a great difference between a company formed for the purpose of carrying on a business in itself illegal, and one formed for a legal purpose, but conducted in a manner not legal, by reason of non-compliance with a statutory pre-requisite, such as the directors of a bank commencing, in violation of the Banking Act, 7 & 8 V. c. 113, business before half the capital of the

company has been paid up, and all the shares subscribed for. An association, legal in its inception, had contracted debts which were alleged to be illegal: Held, that a contribution by the members of such an association could be enforced for the purpose of satisfying its liabilities. *Re Longworth*, 33 Law Tim. Rep. 378.

SETTLED ESTATES.—*Leases and Sales of Settled Estates Act*—*Will*—*Contingency*—*Limitation to several, and the survivor at twenty-one.*—The 19 & 20 V. c. 120 (the Settled Estates Act), s. 11, gives power to sell settled estates, and the interpretation clause provides that the word "settlement" shall signify (inter alia) a will by which hereditaments should stand limited to or in trust for any person or persons by way of succession, &c. The 21 & 22 V. c. 77, brings remainders and reversions within the purview of that clause. It has been decided, that where there is a limitation in a will to trustees, upon trust for such children of A. as shall attain twenty-one, and if one also shall attain twenty-one, the whole to such one, with trusts for maintenance, and a gift over, that is not a case of limitation by way of succession under the Leases and Sales of Settled Estates Act. *In re Bardin's Will*, 7 Week. Rep. 710.

SETTING ASIDE DEED.—*Equitable mortgage*—*Insolvency*—*Evidence.*—In proceedings to set aside an equitable mortgage on the ground of the insolvency of the mortgagor at the time of the mortgage, the fact of the insolvency must be proved by legal evidence; and in case of doubt, the mortgagee is entitled to an issue. *Jones v. Mackenzie*, 7 Week. Rep. 717.

STATUTE OF LIMITATIONS.—*Accumulation of interest*—*Trustee and cestui que trust.*—Where a sum of money is lent to a partnership firm upon an agreement to allow interest at a certain rate, and accumulate it at compound interest, there is no trust to prevent the Statute of Limitations from running. In the following case it appeared that money was advanced by A., in 1847, to a partnership firm, with an agreement that interest was to be allowed at ten per cent. and left to accumulate at compound interest. Interest at this amount was credited from time to time in the partnership books, and accumulated according to the arrangement until the dissolution of the fund in 1852, but no payment was ever made to A., nor an acknowledgment signed by any of the partners after the original advance: Held, that no trust had been created in favour of A., and that the defendant was (under the circumstances) barred by the Statute of Limitations. *Jackson v. Ogg*, 7 Week. Rep. 730.

VOLUNTARY SETTLEMENT.—*Simple contract creditor*—*Assignees of bankrupt when not trustees for creditors.*—Prima facie, a creditor, whose debt originated after the date of a voluntary settlement, can have no right to complain of it, and more particularly if he have not obtained a judgment decree, or order, seeking to make the debtor's property available to it, and the debtor being alive. There may be special and particular circumstances which may enable a creditor to complain of an act done before his debt accrued. The assignees of an uncertificated bankrupt do not owe the creditors, whose debts have been incurred subsequently to the bankruptcy,

any duty—they are not trustees for such creditors. The preceding remarks will explain the decision in the following case:—A bankrupt, who had been refused his certificate, executed a voluntary settlement in favour of his children, and afterwards incurred debts to the plaintiff and others. The plaintiff, who was a simple contract creditor, filed a bill on behalf of himself and all other creditors subsequent to the bankruptcy, to set aside the settlement as against the subsequent creditors, and made the assignees under the bankruptcy defendants to the suit, on the ground that they were in the position of trustees for the subsequent creditors: Held, that the plaintiff had no equity to sustain such a suit, either against the persons interested under the settlement or the assignees. *Collins v. Burton*, 7 Week. Rep. 689.

COMMON LAW.

ARBITRATION.—*Covenant for referring disputes to, when binding—Ouster of jurisdiction.*—Parties cannot, by agreement, oust the courts of law of their jurisdiction, as by an agreement to refer any dispute which may arise out of a contract to arbitration, except under sec. 11 of the C. L. P. Act, 1854. But independently of that act, the parties may frame their agreement in such a form as to be legal, that is, by creating a condition precedent to the right to sue (see *Scott v. Avery*, 8 Ex. 407, 497). By a covenant in a mining lease, the parties covenanted to refer to arbitrators to be chosen by themselves after any dispute should arise, “any difference, variance, controversy, doubt, or question which should arise . . . touching and concerning any covenant, clause, proviso, word, matter, or thing in the indenture expressed or contained, or the meaning or construction thereof,” and covenanted not to sue in respect of any of these matters: Held, that the covenant afforded no answer to an action for breach of another covenant contained in the lease, since its operations being to oust the courts of their jurisdiction, it was therefore void. *Horton v. Sayer*, 7 Week. Rep. 735.

CONTRACT.—*Transfer—Acquiescence.*—Where a contract to supply work and materials has been transferred, and the party entitled to the benefit of the contract has acquiesced in the transfer, and suffered the work to be completed by the transferee, such party cannot refuse payment on the ground of the informality or insufficiency of the act of transfer. *Falle v. Le Sueur*, 7 Week. Rep. 707.

FALSE IMPRISONMENT.—*Execution—Ca. sa.—Judgment not exceeding £20—Trespass*—7 & 8 V. c. 96, s. 57.—By the 7 & 8 V. c. 96, s. 57, “No person shall be taken or charged in execution upon any judgment in her Majesty’s superior courts, &c., in any action for recovery of any debt wherein the sum recovered shall not exceed the sum of £20, exclusive of the costs recovered by such judgment,” thereby making an arrest contrary to its provisions wholly void in effect. And accordingly it has been held, that an action of false imprisonment may be maintained by a person arrested under a ca. sa. upon a judgment for less than £20, in an action for a debt, although the writ has never been set aside. *Brooks v. Hodgkinson*; 7 Week. Rep. 735.

LIMITATIONS, STATUTE.—§ 4 W. 4, c. 42—*Specialties*—*Death of obligor of bond, and no representation*—*Action within twelve months of administration.*—The decision in *Curlewis v. Lord Mornington* (27 L. J. Q. B. 489; 6 W. R. 682), to the effect, that if an action be brought within the time of limitation, and it becomes abated by the death of the defendant, if an action be brought against his personal representative (he being the only person who can be sued), within a reasonable time after there has been a person who might be sued, then the Statute of Limitations will not afford an answer, notwithstanding the time allowed by the act has passed, has been acted on by the Court of Exchequer in *Sturgis v. Darrell* (7 W. R. 694). It was admitted, that the statute did not contain any such provision; but the court acted on the old decisions upon the 21 Jac. 1, c. 16, considering the § 4 W. 4, c. 42, in *pari materia* with that statute, and they alluded to the hardship of holding that time should tell against a man who could do nothing to help himself whilst it was going on—"to say, that though there is no person in existence whom you can sue, yet, because the statute had once begun to run, and had run for a day or a month, during which there was a person in existence who could be sued, it should continue to run as if there was a person who might be sued." The final decision is left to a court of error, if the party thinks proper to take the matter there.

PATENT.—16 V. c. 5, s. 2—*Construction*—*Time of payment of duties "before the expiration of three years."*—In statutes and deeds, &c., the expressions "the date thereof," and "the day of the date thereof," are synonymous; and when a certain time is to begin to run from a particular date, the time begins to run from the following day: "the usual course has been to construe the day exclusively wherever anything is to be done in a certain time after a given event or date:" per Parke, B., in *Russell v. Ledsam* (14 M. & W. 574). These remarks will explain the following decision. The 22nd section of the statute, 16 V. c. 5, enacts, that letters patent, granted under the Patent Law Amendment Act, 1852, shall be void "at the expiration of three years from the date thereof," unless, "before the expiration of the said three years" a stamp duty be paid: Held, that the three years does not begin to run until the day after the date of the letters patent, and consequently that the three years does not expire until 12 p.m. of the day of the year on which the letters patent are granted. *Williams v. Nash*, 33 Law Tim. Rep. 377.

PUBLIC COMPANY.—*Railway company*—*Contract to carry passengers over line of other company*—*Responsibility for loss of luggage.*—Where a railway company undertakes to carry a passenger to a station upon the line of another company, and gives a ticket for one fare for the entire distance, the contract is an entire contract with the company granting the ticket, and they do not act as agents for the other company, so as to give the passenger a right of action against the other company in case of loss of luggage while travelling upon their line, but the action must be brought against the company who gave the ticket. *Mytton v. The Midland Railway Company*, 7 Week. Rep. 737.

SHIPPING.—8 & 9 V. c. 89—*Registration—Power of master to sell ship—Purchase by surveyor—Delay—Jurisdiction.*—The non-registration of the purchase of a ship will not affect a subsequent bona fide purchaser. The master of a ship may not sell it, except in cases of necessity, or under circumstances which, in the opinion of a prudent man, would render a sale imperative. The proof of this necessity lies on the original purchaser from the master, but not necessarily on subsequent purchasers. The fact of the purchaser being the surveyor of the ship does not necessarily invalidate the transaction. Unnecessary delay on the part of the owner will import acquiescence. The Vice-Admiralty Court has no more than the ordinary admiralty jurisdiction. *The Australia*, 7 Week. Rep. 718.

TOLLS.—*Anchorage and beaconage—Liability to poor rate.*—Tolls, or consuetudines, are almost incident to every ownership of a port, and they are to be considered as part ratione soli for benefit conferred, and not an arbitrary extortion under the colour of law. In the following case it appeared that from time immemorial certain tolls, called anchorage and beaconage, but which were paid generally for the use of the port of S., of which the Bishops of Durham were proprietors, had been levied by the bishops who were also owners of the soil of the port, below low water mark. Held, that the tolls were rateable to the relief of the poor. *Reg. v. The Earl of Durham*, 7 Week. Rep. 732.

WATER, RIGHTS OF.—*Ancient right of water—Right of landowner to subterranean water.*—The law respecting flowing water, and, a fortiori, water flowing in visible channels, is different from that respecting water which percolates through the soil. In no case can a grant be presumed of the latter, and any pretence to a right of such must be jure naturæ; but it would be impossible to reconcile such a right with the natural rights of landowners, or to fix reasonable limits to its exercise, if it existed. A., an occupier of an ancient mill, used, as of right, the flowing of a river, which was in part supplied by the rainfall of a district, including the town of C., which sank a well, and thereby intercepted underground water that would otherwise have flowed to the river, of sensible value towards the working of the mill: Held, that A. could not maintain an action for such interception. *Observations on Dickinson v. The Grand Junction Canal Company* (7 Ex. 282); per Lord Wensleydale:—There is no distinction between superficial water and subterranean as to the origin of the right to either, which is jure naturæ: C. had a right to the subterranean water on his land, but only to use it in a reasonable manner. *Chasemore v. Richards*, 7 Week. Rep. 685.

COMMON LAW PRACTICE.

PATENTS.—*Patent Law Amendment Act, 1852—15 & 16 V. c. 83, ss. 41, 43—Costs—Particulars of objections—Special jury*, 6 G. 4, c. 50, s. 34.—Where the plaintiff in an action for the infringement of a patent, after having given notice of trial, abandoned the action, the defendant having delivered, with the pleas, particulars of objections pursuant to the require-

ments of sec. 41 of the 15 & 16 V. c. 83: Held, that the defendant was entitled on taxation to his costs for preparing the particulars and the evidence in support of them. Section 43 applies only to cases where there has been a trial. Held, also, that the defendant having obtained a rule for a special jury, was not entitled to his costs thereby incurred. *Greaves v. The Eastern Counties Railway Company*, 28 Law Journ. Rep. Q. B. 290.

PROBATE AND DIVORCE.

WILL.—*Attestation and subscription of witness*—1 V. c. 26, s. 9.—By s. 9 of the Wills Act, a will is to be signed by the testator, or by some other person in his presence and by his direction, and such signature is to be made or acknowledged by the testator in the presence of two or more witnesses present at the same time, and such witnesses are to attest and subscribe the will in the presence of the testator, but no form of attestation is necessary. In the following case, A. acknowledged his signature to duplicate wills in the presence of B., who thereupon attested and subscribed the wills. A few hours after, C., being also present, B. suggested the propriety of a second witness. A. thereupon acknowledged the testamentary papers and his signatures in the presence of B. and C. B. pointed out his subscription to C., who wrote his own name. B. then on one of the papers completed the letter F. (being the initial letter of one of his Christian names), by crossing, A. having omitted to cross it in the morning. He then, on both the papers, added the date, "The 17th day of December, 1857:" Held, not to be sufficient subscription in attestation of the will. *Charlton v. Hindmarsh*, 7 Week. Rep. 725.

BANKRUPTCY.

CERTIFICATE.—*Bankrupt's own petition prosecuted by a creditor.*—C., a trader, presented a petition for adjudication of bankruptcy against himself, but failed to show, to the satisfaction of the court, £150 available assets. Leave was then given to a creditor favourable to C. to prosecute the petition, and C. was adjudicated bankrupt thereunder. The estate did not produce £150. The court held, that the bankrupt's petition, being the foundation of the proceedings, and the adjudication being grounded on a false allegation, the certificate should not be allowed until the £150 was forthcoming, and the sitting was adjourned accordingly. *Re Cooper*, 33 Law Tim. Rep. 379.

DISPUTED ADJUDICATION.—*Petitioning creditor's debt.*—A., in 1857, purchased railway shares for B., who paid £1,859 for them, and left them in A.'s custody. A. subsequently sold the shares without B.'s knowledge, and applied the proceeds to his own purposes. A. absconded in 1859, at which time B. was indebted to him about £750: Held, that in the absence of evidence as to the sale and conversion of the shares, B. had a good petitioning creditor's debt to support an adjudication of bankruptcy against A., although the sum claimed by him, £200, might not be the exact amount due to him upon the actual sale. *Ex parte Morgan*, 33 Law Tim. Rep. 378.

CRIMINAL LAW.

CLERK OF THE PEACE.—Fees—Public policy—Illegal agreement.—

An agreement by the corporation of a borough with the clerk of the peace upon his appointment to the office, that the surplus of the fees, after payment of his salary (at a fixed rate) and incidental expenses shall be paid over by him to the borough fund, is illegal and void as against public policy. *The Corporation of Liverpool v. Peter Wright*, 7 Week. Rep. 728.

LUNATIC PAUPER.—Expense of maintenance—Borough contributing to county rate.—The 14th section of the 18 & 19 V. c. 105, charging the expense of lunatics, whose settlement cannot be ascertained, on certain boroughs applies only to boroughs not liable under 5 & 6 W. 4, c. 76, s. 117, to the payment of any proportion of the sums expended out of the county rate, and therefore 12 & 13 V. c. 82, s. 3, being repealed by the former statute, no order of chargeability in respect of such expense can now be made against a borough which in any respect contributes to the county rates. *The Queen in the prosecution of the guardians of the poor of the parish of Birmingham v. Baccus and another*, 7 Week. Rep. 738.

LEGAL REMINISCENCES.

The Circuits—The Members of the Western Circuit Assize Association.

Sir J. T. Coleridge (formerly Mr. Justice Coleridge) has lately read a paper detailing some of his reminiscences whilst in harness, and we propose to make a selection from the most interesting portions of his discourse. Respecting his circuit experiences, the learned ex-judge thus speaks: "Perhaps the circuit, more than any other part of the lawyer's career, presents matter of popular interest. It is that which brings the law more intelligibly and vividly into operation before the eyes of the people than any other part of its whole machinery, and whether, as regards the barrister or the judge, the recollections of it will be more personal * * * my honoured friend, the late Mr. Justice Park, used to fancy that the origin of the circuit might be found in Holy Writ, in the example of Samuel, of whom it is recorded that 'he went from year to year in circuit to Bethel and Gilgal and Mizpah, and judged Israel in all those places, and his return was to Ramah, for there was his home and there he judged' Israel.' Josephus makes the parallel still more close, because he states in his Antiquities that Samuel made his circuit through the cities twice every year. This is certainly a case in point, and may be the first example. But we need hardly go so high or so far for authority. Wherever the territory of a state extends to any considerable distance from the seat of government, it is among the most obvious and early suggestions of civil polity. To remedy in some way the inconvenience of compelling all complainants, and all litigant parties, witnesses, and others, to resort for the administration of

justice to the centre—in the popular phrase, to bring justice home to the door of the subject—must be in theory, with proper limitations and safeguards, always desirable, and in this country where the institution of the jury in some form—rude indeed, and with somewhat different attributes from those of the present jury—was in force from a very early period, there was an additional reason originally, as perhaps you know. The jury-men repaired to London, or wherever the court sat, and the case was tried there—as causes of importance still occasionally are at the bar of the court, and before all the judges of it. The manifest inconvenience of this, and the necessity for trying some causes on the spot, gave early rise to the periodical visit of judges commissioned for the purpose of trying the disputed facts, and so by degrees, which I need not stop to explain to you, to the circuits as at present constituted. * * * Many things—railways especially—have materially changed the circuit since I first joined the Western Circuit. Then we assembled usually in nearly our full number, at Winchester, and continued together till the close in Somersetshire. Our number somewhat diminished in Cornwall. The facilities which railways afforded made the attendance somewhat less regular, and in consequence the moral influence of the body on its members is much diminished. We met usually in high spirits, and there was much excitement on the whole round. Those who were in full business were not the least merry or regular at the circuit mess. There were the aspirants—men who were beginning to rise into notice—full of hope and interest. There were the very young men—young at least, according to legal calculation—for whom the novelty of the life and the business in court were in themselves a continual treat, who found in watching the proceedings, or the displays of eloquence and skill in the leaders, or of learning in the juniors, both instruction and amusement—to whom the mere novelty and strangeness of the whole scene around them were pleasure enough: True, there was necessarily some few who were growing old in heartless disappointment—some whose hearts were sick with hopes again and again deferred; and when to this was added—as was sometimes the case—the thought of a wife and children at home dependent upon the husband's success in his profession, or the pressure of means so scanty that the candidate might soon be compelled to abandon the struggle altogether from inability to meet its expenses, it cannot be denied that there were elements of sadness to qualify the apparent general light-heartedness of our body. But it must be said that trials such as these—among the severest, perhaps, to which men can be exposed—were in general gallantly borne, and the feelings of disappointment, anxiety or distress so nobly concealed, that to the many they were unknown. The few sympathised with the sufferers, and rendered whatever comfort, kindness, and encouragement could afford—and not a little was done by the successful men in this way as opportunity afforded. Our circuit, in respect of the country we travelled over, was very interesting. Besides the character of the towns themselves, and the beauty of the direct routes from place to place, at every point there were off-lying objects and places to which we

wandered, as time and leisure allowed, in small parties. The Isle of Wight, Weymouth, Lyme, Sidmouth, and Exmouth, Plymouth by one route into Cornwall, or the Moor and Tavistock by another—the north coast of the two counties—the Quantock and Cheddar, all these, in turn, a circuiter might hope to visit in the course of this or that circuit. I have alluded to the expense. This was certainly to not a few a serious inconvenience. Indeed, it was not untruly considered that the whole body of circuiters spent in the several counties more than the whole body received in them. Our circuit was a somewhat stately affair. The judges did not post, but travelled with sober haste, drawn by their own four-in-hand. The barristers posted or rode. It was a tacit rule not to travel from place to place in any public conveyance. The “leaders” always had their private carriages, and some of them their saddle horses also. Our mess was rather an expensive one, and we had our own cellar of wine at each circuit town. This was under the care of our ‘wine treasurer,’ and a van with four horses attended us, under the superintendence of our baggage master. These were our two circuit officers; two of our own number, upon whose arrangements we depended much for our comforts, and to whom we looked on our ‘grand day,’ which we always kept at Dorchester, not merely for an account of their own departments, but also for the introduction of new members, and an account, generally given with much point and humour of preferments, promotions, marriage, and any other incidents which might have befallen any of the members since the last circuit—‘offences’ these, as we have called them, always expiated by contributions to the ‘wine fund.’ The leader of the circuit was the barrister highest in rank. He was expected to be a frequent attendant at the mess. To him application was first made in disputed points of professional etiquette, and he was expected to watch over the interests, character, and conduct of the circuit. The judges, I have said, travelled with their own four horses. I may mention also, as a little circumstance now passing in oblivion, that they travelled with their own “four wigs also.” The brown scratch for the morning when not in court, the powdered dress-wig for dinner, the tye-wig with the black coif when sitting on the Civil side of the court—the full-bottomed one which was never omitted for the Crown side. Those were days, you know, when gentlemen in common life wore coats of every colour, but we always dined with the judge in black. Some judges, indeed, were strict in their notions as to the dress of the bar at other times. I remember once, when a party of us halted at Blandford for luncheon, on our way from Salisbury to Dorchester, at the same inn at which their Lordships were resting for the same purpose. We strolled out while our repast was being prepared, and met them. One of our number had a black silk handkerchief round his neck and a blue cloth cap with a gold lace band on his head. We observed that one of the judges drew up at this. It chanced that a few minutes after a recruiting party marched down the street with drum and fife, and at our luncheon the butler appeared with a demure face to say, with his

Lordship's compliments to the gentlemen of the bar, that as some of them seemed to have a military turn, he sent to say that there was a recruiting party in the town, and they might like perhaps to take the opportunity of enlisting.

"*The First Circuit.*—In January, 1835, I was placed on the bench, and soon after started on the Oxford Circuit with the late Sir James Allen Parke. It was not without some misgiving that I set out with him. I was conscious of being somewhat regardless of forms and ceremonies, and knew how much importance he attached to them. I was afraid that I might find him a difficult companion, or that he might find me an uncongenial one, and the judges on a circuit live so entirely as members of the same small family, that without an entire agreement there is a chance of much discomfort. I did that good and kind-hearted man but little justice. He treated me with perfect respect and consummate kindness. He was always ready to help me, to take more than his share of the work, and I found him a most entertaining, lively, easy companion. The Oxford Circuit is, next to the Northern, the largest and the most laborious. It embraces eight counties, and, as the junior judge, I had to dispose of the prisoners in Berkshire, Staffordshire, Herefordshire and Gloucestershire. I had been accustomed only to what I must still think the softer natures of the Western counties. The amount and the savage character of the offences in Staffordshire made a deep impression on me. I seemed to feel a load off my mind, and that I was in greater personal safety, when I drove out of the county. I find that I have the notes of the trials of no less than 281 prisoners on this circuit. To this you are to add the civil causes which I tried in the other four counties, and the business transacted in the judge's lodgings, with the official correspondence which necessarily followed on this work in court; and you will have some idea of the labour imposed on an inexperienced judge on his first circuit. I say nothing of the anxiety in the case of the graver offences. In the spring of 1840 I travelled the Northern Circuit with Mr. Justice Erskine. It was the circuit which followed the Sheffield treasonable outbreaks and the chartist demonstrations all through the North. But, as I was the senior judge, it was not my duty to deliver the Castle gaol in Yorkshire. My colleague was nearly overdone by the labour and anxiety of that duty. He was assisted as usual, but at the end he was obliged to rest a day or two, and I went on alone to Lancaster. My turn was at Newcastle and Liverpool, and I find notes of the trials of 185 prisoners there. Those were anxious times—happily now passed by—and I hope I do not deceive myself when I think that some small share in the pacification of men's minds at the time may have been attributable to the perfectly dispassionate and fair administration of justice upon these trials. Of course I say this not boastingly. The same remarks would have applied equally whoever had been the judges.

"*The Brilliant Band of the Western Circuit—Wilde and Follett.*—Now that I have retired from the occupation of so many years of my life, to return in thought to my early years—to turn over note-books long since closed—

to bring before my eyes faces long since passed away — naturally refreshes old associations, brightens up old recollections, and awakens thoughts and feelings which slumbered for years only to start up into greater vigour, and more sensible tenderness. I cannot but think of that brilliant band whom I found on the circuit when I joined it, or who were soon after enrolled among its members, of whom now very few remain. Three are now upon the bench, and amongst its most exalted and distinguished members. Erskine—a fourth—is living in dignified and useful retirement, respected and loved by all who enjoyed his intimacy. Wilde departed after having achieved the highest honours of the profession ; and Follett became the too early victim of his own great success.

“I may be pardoned a few words on each of these distinguished individuals. Wilde was indeed a remarkable man ; he had an intellect acute even to a subtlety ; but somewhat wanting in the breadth which a more complete education and more general acquaintance with literature might have given ; his reading, indeed, was most limited in kind and quantity. He had industry which nothing could weary—courage which nothing could daunt—perseverance which shrunk from no difficulty. Thus, by nature of a somewhat ungainly figure, and aspect far from prepossessing, with a decided stammer in his articulation, he made himself a very influential speaker ; his action was graceful, his declamation very seldom impeded, and his voice by no means disagreeable. Always clear in his statement, and close in his reasoning, he sometimes rose with the occasion to a very high strain of eloquence. He was wearisome in the length of his examinations and of his speeches, not because he indulged in useless repetition, but because he saw every point in the case, and would not, or was unable to discriminate between the great and the small ; he would throw overboard nothing ; the verdict was his object, and whether he won it on a bye-point, or on the broad merits, was nearly indifferent to him. When a case took an unexpected turn, he was not quick in changing his front and adopting a new line. As an advocate, no one ever more faithfully discharged his duty to his client ; compared with this, his own comfort, pleasure, health, weighed nothing. It was difficult for such a man always to deal quite candidly with his opponent ; yet I am bound to say, that he was a fair and honourable practitioner, whose word might be implicitly relied on. Respecting sincerely as I do the attorneys as a class, I may yet say that it was his misfortune to have practised as an attorney so long as he did—no doubt it conduced in many ways to his early and great success, but it prejudiced him when that success was attained. The difficulties which he had encountered and overcome in early life left their impress too tightly and closely on his whole nature, when he should have had a more unfettered step, and taken a wider view ; and his mind was so intently fixed on details, at the age when our faculties are most expansive and supple, that he had not afterwards the full power of embracing the entirety of great subjects, which even at the bar was often required of him, and which his station afterwards made indispensable to perfect success—a power which under other circumstances would surely

have been found in one who had his strength and grasp of intellect. Let me add, in conclusion, what is even of more importance than all his success in life, that he was a liberal, kind-hearted man, a fast friend; and that, when it fell to his lot to dispense patronage, especially in the church, no man made his appointments with less reference to party politics, or a more sincere desire of choosing his objects well. With Follett I had more familiar relations. I saw his whole course, standing near to it in its commencement, and up to my quitting the Bar I was deeply interested in observing it, and I early predicted his future eminence. No man, I suppose, ever had, or desired to have, success more complete in proportion to the time he was in the profession; had his health been continued to him he would have entirely filled up the place at the bar which Sir James Scarlett had left, and I think still leaves, unfilled; he wanted his variety of legal learning, and his great experience, not only in legal practice, but in general life—but he was his equal in the ready appreciation of facts, and in the soundness of his legal principles. He was, I think, a better speaker, for he was equally natural and apparently free from artifice, and yet was more capable of earnest and strong declamation; his voice was sweet and action good. In the conduct of a case he was singularly ingenious, handy, self-possessed, and free from embarrassment when things took an unexpected turn; he never seemed to labour, and yet he never seemed negligent or indifferent. He was popular as a junior, and still more so as a leader; his sweetness and simplicity, and heartiness of manner ensured this—and his thoroughly good temper. No man seemed to grudge him his great success. I once appeared before him as assessor to the Lord Warden in an important stannary cause, and he gave promise of such judicial powers that, had he lived to preside either in law or in equity, he would, I am sure, have earned a reputation not inferior to that of any one who had preceded him. But his frame was never a strong one, and he taxed it beyond the endurance of the strongest. I think the last time I saw him in public was in the House of Lords, in the Sussex Peerage Case, when, in remarkable condescension to his infirmities, the seats of the peers and judges were brought down to the bar; behind it a stool was placed, on which he sat during his argument. I say nothing of him as a member of the Lower House; many of you know well what a position he filled there. It is much to be lamented that, neither as a lawyer or a legislator, he has left any lasting monument behind him of his great abilities; the business of the day swallowed him up. Like a well graced actor, "the admired one of his day," he lives in the recollections of one fleeting generation who saw him; thenceforward, a mere tradition of him remains—tradition becoming every year more uncertain, obscure, indiscriminate.

"*Assize Associations.*—The circuit, to speak generally, is an institution of the country, and surely a most useful one. I speak not now in regard of its primary object, the cheaper and more expeditious administration of justice, but of its effect indirectly on the law—on lawyers and on judges. Those who administer our common law have unobservedly a considerable

influence in the making it, and it has been a common observation—even amongst eminent legislators—that the greater part of our law is judge made. And it has been said, that judge-made law is generally the best we have. Now in this the labours of the bar have a greater share than is commonly supposed. Such men as Copley, Scarlett, Wilde, or Follett—men jurists in the constitution and habits of their minds—cannot but leave their stamp on the law, and influence the making of what become leading decisions, long before they themselves attain to the bench; this every well-read lawyers knows; and it is surely something that both judges and barristers should periodically leave their books and the courts of London—should mix familiarly with other men—see other habits—learn the reality of life, its sorrows, its conflicts—face the nature of man, sometimes under its basest and most hideous aspect; but not seldom, believe me, presented in attractive colours and with an heroic impress on it. Thus it can scarcely be but that their own minds are enlarged, their reasoning powers strengthened, and they themselves acquire a truer wisdom than they could learn from the mere study of treatises or arguments on points of law in Westminster-hall. Nor can the periodical visit of such a body as the judges and the bar be of no effect on the counties through which they pass. I hope I may not be speaking under a too strong professional bias, as I am sure that I am not with reference to myself, when I say that these visits work wholesomely upon all classes of the population. It is not merely that even the uneducated see justice administered and the law vindicated in criminal cases in a way which they understand, which interests them very deeply, and by which they are very solemnly impressed. Who that is familiar with a county assize can doubt of this? Let any one mix with the crowd, and listen to the remarks which a trial elicits, with the sensible though unlearned criticism on the conduct of the judge and counsel, and he will see that these exhibitions, often noble and solemn, and sometimes it may be feared, the mournful betrayal of infirmity of temper, or want of feeling, have their wholesome effect. A most acute and eminent judge told me that he was reporting to me a compliment on myself, which I ought to value most highly, from an old market woman—whom he had overheard discussing with her neighbours a trial at Stafford, at which I had presided. She summed up her judgment of me thus: 'I like that judge; he's full of consideration.' He told me very truly; and I did prize it most highly. But not only the uneducated, the educated classes in their intercourse with the judges and the bar find themselves thrown into the society of perhaps more sparkling intellect—greater variety of acquirements—and with prejudices at least different from their own. And the result is that their own intellects are stirred, and they are led to more active inquiry, and perhaps larger views, on whatever may be the questions of the day."

Moot Points.

No. 134.—*Claim to Barony.*

In the year 1313, Baron Stapleton was summoned by King Edward II. to attend his Parliament at Westminster.

Thomas, the fourth Baron, died without issue, leaving his sister Elizabeth (afterwards married to Sir Thomas Metham) the sole heiress of his estates and dignity. The representative of this honourable family of Metham, during the civil dissensions of the seventeenth century, was Sir Thomas Metham, who commanded a regiment of Yorkshire gentlemen in the service of King Charles I., and was slain by the rebels at Marston Moor.

His only child was married to the representative of an ancient Yorkshire family, which is in existence at the present day. Would any of your correspondents be kind enough to favour me with a sketch of the proceedings necessary to establish a claim to this ancient barony.

M. F. C. D.

No. 135.—*Executor—Release.*

Is an executor, in any case, entitled to a release at the expense of the estate?

F. I. W.

No. 136.—*Devise—Copyholds—Enfranchisement.*

A., by a will dated in 1840, devises to trustees all his copyhold hereditaments, upon trust to sell the same. He subsequently enfranchises the same hereditaments; and in 1848, after such enfranchisement, makes a codicil to his will, but such codicil does not refer to the copyholds or the enfranchisement. Can the trustees make a title to a purchaser of the enfranchised lands. A reference to authorities will oblige; also an opinion whether the codicil had any effect upon the devise or power to sell in consequence of the provision in section 34 of the Wills Act as to republication by codicils.

W. G. H.

No. 137.—*Foreign Contract.*

A Frenchman is entitled to a share of personal estate of a testator who died in England. He agrees to sell his interest for a sum of money, and the agreement is drawn in England in the English form, and is sent to France for execution by the foreigner, who simply signs his name, and his signature is attested by an English solicitor without the intervention of a French notary, or the observation of any French form. Can this agreement be enforced, or be safely acted on?

W. H. S.

No. 138.—*Agreement to Recover Property.*

A. claims to be entitled to a sum of about £30,000 as the sole next of kin of Z. He agrees with B. that if B. will recover the amount at his own expense, and pay over to B. the first £10,000 received, he, A., may retain everything beyond that amount. Is this agreement (which was not under seal) open to any, and what, objection; and if so, suggest a better mode of accomplishing the objects in view.

M. J. N.

No. 139.—*Devise—Trust.*

A testator commences his will by giving all his real and personal estate to A., his heirs, executors, &c., upon the trusts thereafter declared. He then directs that certain portions shall be held in trust for B., C., and D. The will then proceeds to dispose of the residue as follows: "I give all the residue of my real and personal estate to the said A., his heirs, executors, and administrators, nevertheless as to one moiety thereof in trust for E., his heirs, executors, &c." No trust is declared of the other moiety, nor is there any mention made thereof. Is A. entitled beneficially to the moiety of which no trust was declared, or to whom does it belong? O. F. F.

No. 140.—*Grant of Annuity—Registry.*

A., by deed poll in 1722, voluntarily, and without consideration, grants to B. and his successors, for a charitable purpose, £10 a year, to be issuing from lands in a register county.

The premises charged have descended or come to D., the present owner

The annuity has always been paid, but D. says he need not pay unless he chooses. The deed has not been registered.

Quere, is such grant, notwithstanding the registry of a subsequent conveyance, now valid? and if so, is the grant valid against a purchaser without notice, and if not, would the registry by the grantee now render it valid?

No. 141.—*Devise of Copyhold—Title.*

In January, 1838, A. devised a copyhold house to B., his married daughter, on condition that she or her husband thought same worth £300, and paid the two legacies thereafter mentioned.

He gave to C., his only son, £100, and to D., another married daughter, a like sum, to receive interest for life, and if dying before husband, to go to her children; but surviving him, to have power to dispose thereof. But if B. and her husband thought premises worth less, then to be sold (not saying by whom) and money arising divided among the three children, but D.'s share to be subject to restrictions above recited. The residue of his estate and effects he gave to his said three children to be equally divided amongst them.

Testator died in 1814. B.'s husband, the sole executor, proved the will, and has sold the premises for £200. All the parties are living. By the custom, a fine is payable to the lord of the manor on death, and the person having the legal estate is to be admitted.

Quere, how can a good title be made, and by whom?

C. R.

No. 142.—*Master and Servant.*

By an agreement, dated the 2nd day of July, 1858, A. agrees to work in the capacity of servant for B., as a weaver of woollens, until the 1st day of January, 1860, on B. finding or providing A. during the term sufficient and proper meat, drink, and lodgings, and also paying A. the sum of 5s. per week as wages, which B. thereby agreed to provide and pay. The above is the sole nature of the agreement. The mooter wishes to know whether B.

can arrest A. for absenting himself during the said term, or whether the agreement is void for want of mutuality on the part of B. to find A. with employment (Vide the case of *Dunn v. Sayles*, 13 L. J. Rep. N. S. Q. B. 159, and also *Reg. v. Welsh* and another, 22 L. J. Rep. M. C. 145). I am of opinion the agreement would be valid, and B. could arrest A.

JO. IBBERSON.

No. 143.—*Apportionment of Rent—Parol Agreement—Death of Tenant for Life.*

A., by will, devises houses to B. in tail, which were in testator's lifetime let to tenants on *parol* agreements. B. died in the middle of a quarter.

Who is entitled to the rent of the quarter in which B. died, B's executor, or the devisee over on failure of issue of B.?

T. F. P.

No. 144.—*Assignee—Covenant to pay Rent, &c.*

Is the assignee of a lease for years, having assigned over, discharged from the covenant to pay rent before the entry of his assignee? The mooter will be glad to meet with a case in point.

T. P. TOMES.

No. 145.—*Indictment—Assault, &c.*

On an indictment for an assault with intent, &c., would evidence that the prisoner had taken liberties on a prior occasion be receivable in order to prove his intent.

T. P. TOMES.

No. 146.—*Registration—Objection to Vote, &c.*

At a Registration Court for a county held lately, one side objected to a claim made by B. as a shareholder of the — Company, that he was a trustee, and, therefore, could have no vote. It was also proved, that B. had received no actual dividend during the past year, the profits of the company having, at the last general meeting, been voted by the trustees and shareholders for building and other purposes. The revising barrister decided B.'s vote was good. Is this decision correct, and on all fours with other cases (if any) of a similar nature.

T. P. TOMES.

No. 147.—*Repealed Administration—Retainer.*

Administration was granted to a creditor, but was afterwards repealed at the suit of the next-of-kin of the deceased. Is the creditor justified in retaining against the subsequent administrator?

A. K. R.

No. 148.—*Bill—Particulars—Consideration.*

In an action by A., the drawer, against G. C., the acceptor of a bill of exchange, the particulars of the plaintiff's demand were given without stating the consideration for the instrument. Should A. fail on the special count, will he be precluded from giving the consideration in evidence?

A. K. R.

No. 149.—*Failure of Bank.*

B. had a sum of money to receive from a person living at C—, and not wishing to incur the expense of a journey, accepted the offer of M. a friend also living at C—, to receive and retain it for him until he visited that

part of the country. M. gratuitously obtained the money, and paid it into the bank mixedly with his own cash. Shortly afterwards the bank stopped payment. Is M. liable for the loss? A. K. R.

No. 150.—*Sale of Partnership Property.*

Three members of a firm take a conveyance of land in their own names, the consideration being stated to be paid by them, but being, in fact, partnership money, and nothing appearing on the purchase deed as to the partnership. The other partners are very numerous, and some persons, who were partners at the time of the purchase, are since dead. The three partners have lately entered into a contract with B. for the sale to him of the land, and they stipulate that their co-partners shall not be required to join in the deed to convey, or to sign receipts, and that the purchaser shall be satisfied with a conveyance and receipt by such three partners. Would a court of equity enforce the stipulation, it being, it is submitted, a means by which a breach of trust may be committed. There is nothing in the partnership deed or other document authorising the three partners to purchase and sell land, or to advance money, or give receipts on sales of land.

W. JAMES.

No. 151.—*Costs of Covenant to Produce.*

In a contract for sale it is stipulated that the deeds shall be delivered to the purchaser on his entering into a covenant to produce them to the vendor, but nothing is said as to the expense of the covenant. Who will have to bear the expense, and who is to prepare the deed?

O. F. F.

No. 152.—*Costs of Transfer of Mortgage where Mortgagor does not join.*

A mortgagor is out of the country, and his address is unknown. A person takes a transfer of the mortgage without the mortgagor joining, and after making inquiries, in vain, after him. Will the transferee be entitled to charge the mortgagor, on his redeeming, with the costs of such transfer.

LEX (OXON.).

No. 153.—*Devise on attaining Twenty-one—Vested Estate.*

I have seen it stated in some report (but cannot say what), that on a devise to A. for life, and after his decease to his children on their attaining twenty-one, that the children take a vested interest immediately on the death of their parent, though then under twenty-one. I should be glad to know whether there is any, and what, authority for this.

T. O. X.

No. 154.—*Succession Duty—Appointment to Child.*

A father, having a power under a settlement to appoint a sum of money (which he put into settlement) among his children, makes such an appointment since the Succession Duty Act came into operation. Are the appointees bound to pay succession duty? The Crown claims the duty, saying that the case is not within sec. 16, sed quære.

T. O. X.

No. 155.—*Right of Way.*

Can a right of way to fetch water from a spring, or for any other purpose, be claimed over leasehold lands held under the Archbishop of York for three lives, if an uninterrupted user for thirty years can be clearly proved by virtue of the 2 & 3 W. 4, c. 71. M. GEORGE BOOTY.

No. 156.—*Petitioning Creditor's Debt.*

Will a petitioning creditor's debt, barred by the Statute of Limitations, support a fiat? It will be perceived that sec. 42 of the 3 & 4 W. 4, c. 27, only takes away the remedy to recover, but does not destroy the debt.

M. GEORGE BOOTY.

No. 157.—*Emblements.*

A., seised in fee, sows land, and conveys it to B. for life, remainder to C. for life, and both B. and C. die before severance. Who are entitled to the crops? M. GEORGE BOOTY.

Answers to Moot Points.

No. 109.—*Dower (ante, p. 237).*

I do not perceive that this Moot Point has been answered by either of your correspondents.

The case of Fry v. Noble is exactly in point, and decides that a widow, married after the passing of the Dower Act, is not barred of her dower by the common law uses. The reason is, the Dower Act (3 & 4 W. 4, c. 105) gives women married after the passing of the act a right to dower in equity, whereas the ordinary dower uses only bars the right at law, and previous to that act, no declaration in a deed would have the effect of barring a wife of dower (see Hayes on Conveyancing, 300, 306). F. A. C.

No. 111.—*Lost Property—Presumption of Finding—Enforcing Reward*
(ante, p. 284).

As to the first question contained in this Moot Point, I am of opinion, that the finder of the dog would not be presumed to have seen the advertisement.

2ndly. Unless it could be proved that B. knew that the dog was stolen (if in fact it was stolen), he would not be punishable for having possession or detaining the dog (8 & 9 V. c. 47): the remedy would be by an action.

3rdly. I think the owner of the dog would be allowed to put his own construction on the words of his advertisement, provided it be a fair and consistent construction, and that it would be considered that he intended to limit his liability to pay the reward offered to the time stated in the advertisement.

4thly. I think the time would be deemed to run from the day the newspaper containing the advertisement was published. F. A. C.

No. 122.—*Party taking down his own house (ante, pp. 286, 341).*

Unless C. D. can show a right to the support of the house belonging to A. B., it seems that the former cannot maintain an action against the latter (*Peyton v. Lord Mayor of London*, 9 B. & C. 725; see also *Wyatt v. Harrison*, 1 L. J., N. S., K. B. 237). But in the case of *Massey v. Doillon* (5 Car. & Pa. 61), it was held, that a person pulling down an adjoining building was bound to give notice to his neighbour, and to use due care and caution.

F. A. C.

No. 122.—*Party taking down own House (ante, p. 286).*

I think A. B. would be liable for damage done to the house of C. D., although there was no negligence or carelessness on the part of A. B. in taking down his own house. But if the house of C. D. had got out of its perpendicular, and at the time of A. B. proceeding to take down his own house, it leant upon, and was supported by, the house of A. B., and had remained there in that state for twenty years at least, the question as to the right of support could be raised (see *Stansell v. Jodrell*, Selwyn's N. P.; *Hide v. Shornborough*, and *Humphries v. Brogden*, 12 Q. B. 749) by C. D.; but there is, I think, great doubt, notwithstanding the above authorities, whether this right could be maintained, for it seems contrary to public justice and reason that a man, by building a weak house adjoining to his neighbours, can, if that weak house at all gets out of its perpendicular and leans upon the adjoining house, thereby compel his neighbour either to pull down his own house within twenty years, so as to prevent a right from being acquired by twenty years' enjoyment, or to bring some action of law, the precise nature of which is not very clear; otherwise, it is said, an adverse right to be acquired against him. The right of one man's land to support from the adjoining land is not an easement, or in the nature of an easement at all (see *Rowbottom v. Wilson*, 8 E. & B. 123). If, however, the houses of A. B. and C. D. had been originally built by the same owner, the right of support might exist (see *Peyton v. The Lord Mayor of London*, 9 B. and C. 736). In the case of *Solomon v. Vintners' Company*, Law Tim. Rep., vol. 33, which seems a case in point, where plaintiff owned a house; adjoining was a house of a third person, and adjoining this third person's houses were two houses of defendants. The four houses, for more than thirty years past, were all of them out of the perpendicular. Defendants contracted to have their houses pulled down and others erected in their places, and by so doing, the plaintiff's houses fell. It was held, that the right for one building from an adjoining building was not a natural right. Therefore, after considering the foregoing authorities and cases, I am of opinion, that if the house of C. D. got out of its perpendicular, and leant or was supported by the house of A. B., A. B. is not liable, even supposing that C. D. has had a right of support for more than twenty years.

T. H.

No. 123.—*Death of Devisee in Testator's Lifetime (ante, p. 286, 341).*

The difference of the opinions expressed on this point affords an excuse for writing a line or two more with regard to it; and I trust that the

mooters who have already inserted replies will not allow it to be passed over without arriving at some probable conclusion. Notwithstanding the opinion of the conveyancer cited by T. D. G., I scarcely feel inclined yet to alter the views I have already expressed. An actual seisin in possession has hitherto been considered absolutely essential in order to confer upon a husband a life estate by curtesy. But in the case before us the wife was not even seised in *law*, much less in *deed*. Nor does a consideration of 1 Vic. c. 26, s. 33, tend very materially to vary my opinion. Had B. died immediately after the decease of A., the testator, the husband would have been entitled to an estate for life, whether issue were then living or not, if *she had had, at any previous period, issue that might have inherited*. But the condition in the 33rd section of the Wills Act is, that the issue of the devisee *shall be living at the time of the death of the testator*. If, then, by the act it had been intended that in such a case as the one before us, the husband should have his life estate; if, in other words, the object of the section had been to prevent the loss to the husband of his life estate, as well as the loss of the fee to the issue, the condition that the issue should be living at the decease of the testator would have been extended to the deceased wife's having had any issue that might have inherited, which is all that is required to confer on the husband his estate by curtesy. But, looking at the act as it stands, the clause appears to me to have been introduced solely for the benefit of the surviving issue of the devisee, and with an utter disregard to the interest of the husband. Had this not been the case, it is only reasonable to suppose, that the framers of the act would have inserted a clause giving the husband a life estate, whether the issue were alive at the testator's death or not. I need hardly add, that, should any sufficient reasons be advanced by T. D. G. or any subscriber holding similar opinions, I shall only be too glad of an opportunity of avoiding the error I at present labour under.

A. K. R.

No. 123.—*Death of Devisee in Testator's Lifetime—Curtesy*
(*ante* pp. 286, 341).

I incline to the opinion that the husband of B. is not entitled to the curtesy, because the wife never became seised; the devise so far as she was concerned lapsed by her death in the testator's lifetime, and it is only by virtue of a statutory provision that the issue, in such a case, is allowed to take.

I should like to see the opinions of other correspondents on the point, as I think it rather an important one in practice.

F. A. C.

No. 126.—*No consideration for Bill* (*ante*, pp. 287, 343).

Unless F., the indorsee, be also the drawer of the bill, a plea by the acceptor of no consideration, or that it was an accommodation bill, will not prevail.

F. A. C.

No. 130.—*Public-house, &c.* (*ante*, p. 339).

I am of opinion that an innkeeper would be bound to keep his house open at lawful hours on Sundays.

C. R.

No. 130.—*Public House, &c. (ante, p. 339).*

An innkeeper is bound to receive *bonâ fide* travellers on Sundays, but I think he can legally object to retail beer, spirits, &c., during what are legally considered lawful hours.

A. K. R.

No. 130.—*Public House, &c. (ante, p. 339).*

An innkeeper is bound to keep his house open on Sunday (excepting during hours prohibited) to every guest who shall present himself, provided he is ready to pay his expenses, that there is sufficient room, and no impropriety in his behaviour (see *Rex v. Ivens*, 7 Car. & P. 213 [Coleridge].)

T. P. TOMES.

No. 131.—*Promissory Note (ante, p. 339).*

One of the chief requisites of a bill or note is that it shall not be dependent on a contingency, but payable at all events (*Carlos v. Fancourt*, 5 T. R. 482). But if this requisition be complied with it is of no importance how long the payment may be delayed. A negotiable bill, however, under £5, must be made payable within twenty-one days, but in other cases, if it "be made payable at never so distant a day, if it be a day that must come, it is no objection to the bill" (*Willes, C. J., Colehan v. Cooke*, *Willes*, 396). If, then, the present note be for a sum exceeding £5, or has not been negotiated, it can, since the requisition has been complied with, be recovered upon.

A. K. R.

No. 132.—*Husband's Interest in Deceased Wife's Property (ante, p. 339).*

I see no impediment to B.'s taking the usual estate for life, as tenant by curtesy of advowsons, rents, &c., of which actual seisin cannot be had, there is curtesy, though the wife died before avoidance or receipt.

A. K. R.

No. 132.—*Husband's Interest in Deceased Wife's Property (ante, p. 339).*

The husband is entitled to an estate by curtesy of the freehold inheritance in fee simple or tail of his wife. An advowson is liable to curtesy and to dower.

C. R.

No. 132.—*Husband's Interest in Deceased Wife's Property (ante, p. 339).*

B. takes a life interest, becoming (as his wife died with issue capable of inheriting), to all intents and purposes, a tenant by curtesy. Advowsons, and right of common (see *Smith's Compend. on the Law of Real and Personal Property*, p. 131; *Co. Litt.* 29), with some other incorporeal hereditaments, are liable to curtesy.

T. P. TOMES.

No. 133.—*Goods exempt from Distress—Action for Distraining (ante, p. 339).*

By 11 Geo. 2, c. 19, s. 19, it is enacted, that "where any distress shall be made for any kind of rent justly due, and any irregularity shall be afterwards done by the party distraining, or his agent"—as by taking such things as are not lawfully the subject of distress—"the distress shall not be deemed unlawful, nor the distrainer a trespasser ab initio; but the party grieved may recover satisfaction for the special damage in action of trespass or on the case."

By the words of the act, the *distrainer* or *his agent* are the parties ren-

dered liable for the unlawful act or irregularity to the party aggrieved. I therefore think that the owner of the goods, as the party injured in the case before us, has an undoubted right to sue the landlord who has injured him by making the wrongful distress.

A. K. R.

No. 133.—*Goods exempt from Distress—Action for Distraining* (ante, p. 339).

I am of opinion that the landlord and his agent are the proper parties to be sued, presuming the agent to have acted with the landlord's authority in the matter.

C. R.

No. 133.—*Goods exempt from Distress—Action for Distraining* (ante, p. 339).

"The stranger—i. e., the person to whom the goods exempt from distress belong—has his remedy by action against the tenant, if, by the tenant's default, the chattels are distrained, so that he cannot render them when called upon" (Extract from Steph. Com. 3rd ed., p. 345; Co. Litt. 49). From this, there is no doubt but that the tenant is the party who ought to be sued.

T. P. TOMES.

No. 134.—*Claim to Barony* (ante, p. 381).

This point is very badly set out, inasmuch as it does not state whether the parties claiming are in possession, or whether the property is in the possession of adverse claimants or persons. If, however, the parties claiming are in possession, and the claim to the barony is not contested, I think the way to obtain the barony is by laying the case and pedigree of such claimants before a select committee of the House of Lords.

If, on the other hand, the possession is in the hands of some adverse claimants, then I opine the remedy is by an action of ejectment, assuming that they have a good title to the same.

J. W.

No. 135.—*Executor—Release* (ante, p. 381).

It is usual in practice to execute a release, releasing and indemnifying an executor, at the expense of the estate; but it is not, I think, general, nor can the executor compel the cestuis que trust to execute a release at the expense of the estate. It is, I opine, entirely at their option; but, at the same time, I think no person would, in a case where an executor is by a will directed to pay a number of legacies, or to sell and divide an estate, refuse to execute a release, indemnifying him and his estate from any after responsibility in respect thereof.

J. W.

No. 137.—*Foreign Contract* (ante, p. 381).

This agreement, I think, ought to have been executed in accordance with the formalities prescribed by the French laws; the party entitled to the share of the personal estate of the testator (who died in England) is a native of, and at the time of signing the agreement a resident in, France, and consequently as such is subject to the law of domicile.

I am of opinion, therefore, that this agreement cannot be enforced, or safely acted upon.

J. W.

No. 139.—*Devise—Trust* (*ante*, p. 382).

I certainly think A. is entitled to the share of the residue of which no trust is declared *beneficially*.

J. W.

No. 142.—*Master and Servant* (*ante*, p. 382).

I am of opinion, that A. may be arrested for leaving the service of B.; for although I do not think there is any obligation on the part of B. to employ A., but A. is bound to serve during the term, if B. choose to employ him.

C. F. W.

No. 143.—*Apportionment of Rent—Parol Agreement—Death of Tenant for Life* (*ante*, p. 383).

The Apportionment Acts do not apply to rents payable by tenants from year to year, which have not been reserved by an instrument in writing. Therefore, the devisee over would be entitled to the quarter's rent (*Re Maikby*, 4 Myl. & Cr. 484).

C. F. W.

No. 144.—*Assignee—Covenant to pay Rent* (*ante*, p. 383).

An equitable assignee of a lease does not become liable to the covenants before entry, but at law no entry is requisite to make the assignee liable (*Cox v. Bi.*, 5 W. R. 437).

C. F. W.

No. 144.—*Assignee—Covenant to pay Rent* (*ante*, p. 383).

It has been decided, that if an assignee of a lease for years assigns over, he will be discharged from the covenant to pay rent. The assignee is merely liable upon the covenant in *respect of the privity of estate*; and no privity of contract existing between him and the original lessor, it follows that his liability can last only so long as he remains possessed of the estate; as soon, therefore, as he assigns the whole of it over, the privity is destroyed, and his liability ended, though the assignment be made without notice to the lessor (*vide City of London v. Richmond*, 2 Vern. 421; and see also the case of *Harries v. Morris*, 1 Ves. & Beam. 11, cited in *Harrison's Digest*, vol. 2, pp. 3594, et seq.), where it is laid down, "That a lessee, under express covenant to pay the rent and perform the covenants, is liable during the whole term, notwithstanding assignments." And again, in the case of *Walker v. Reeve* (3 Dougl. 19, also cited in *Harrison's Digest*, p. 3595), which case exactly meets with and answers the question put by the mooter, it was decided, "That the assignee of a lease for years, who has assigned over, is discharged from the covenant to pay rent before the entry of his assignee." And again, an assignee is not liable for rent accruing after an assignment, even though such assignment is wrongful (*Paul v. Nurse*, 8 B. & C. 486). Even if the assignee assigned over for the purpose of getting rid of his lease, fraud could not be imputed to him, although such assignee never takes *actual possession*, nor receives the lease.

I am of opinion, therefore, that the assignee assigning over is certainly discharged from the covenant to pay rent, even *before the entry* of his assignee.

J. W.

MICHAELMAS TERM EXAMINATION.

Most of our readers will be pleased to learn that the Examiners have appointed two days for the next examination of articulated clerks (*viz.*, the 15th and 16th days of November) in lieu of one day, as formerly. This is a decided improvement, as it must be obvious that one day is not sufficient to enable a candidate to answer the whole of the questions, especially as the day comprised six hours only—*i. e.*, from one o'clock to four o'clock.

For the information of intending candidates it may be added, that the articles of clerkship and assignment, if any, with answers to the questions as to due service, according to the regulations approved by the judges, must be left with the secretary on or before Tuesday, November 8.

Where the articles have not expired, but will expire during the term, the candidate may be examined conditionally; but the articles must be left within the first seven days of term, and answers up to that time. If part of the term has been served with a barrister, special pleader, or London agent, answers to the questions must be obtained from them, as to the time served with each respectively.

On the first day of examination, a paper will be delivered to each candidate, containing questions to be answered in writing, classed under the several heads of—1. Preliminary. 2. Common and Statute Law, and Practice of the Courts. 3. Equity, and Practice of the Courts.

On the second day, another paper will be delivered to each candidate, containing questions to be answered in—4. Conveyancing. 5. Bankruptcy, and Practice of the Courts. 6. Criminal Law, and Proceedings before Justices of the Peace.

Each candidate is required to answer all the preliminary questions (No. 1); and also to answer in three of the other heads of inquiry—*viz.*, Common Law, Equity, and Conveyancing.

The examiners will continue the practice of proposing questions in Bankruptcy and in Criminal Law and Proceedings before Justices of the Peace, in order that candidates who have given their attention to these subjects may have the advantage of answering such questions, and having the correctness of their answers in those departments taken into consideration in summing up the *mérit* of their general examination.

In case the testimonials were deposited in a former term, they should be re-entered, and the answers completed to the time appointed.

CORRESPONDENCE ON MOOT POINTS.

The following are the only additions to the previous lists—*viz.*, Mr. E. Shearn, Stratton, Cornwall; Mr. T. P. Tomes, at S. Tombs', Esq., Solicitor, Droitwich; Mr. E. A. Ward, Moat House Castle, Bromwich, near Birmingham; Mr. James Walker, Messrs. Challinor & Co., Solicitors. Leek.

We propose to publish a revised list of correspondents for the convenience of reference: any additions or alterations should be sent up early in the month.

We have received communications respecting answers to the moot points; and, of course, opinions greatly differ, especially as regards those who answer the moot points, and those who do not. The latter condemn the practice altogether, but the chief stress is placed on the number of answers inserted, and their not being always correct. With respect to the number of answers to favourite or easy moot points, we fear we are in a great degree to blame; but the fact is, that we are unwilling to exclude where there appears to be any difference between the answers, but we believe that for the future we must be more strict in this respect. As to the answers not being always correct, we are not sure that it is so great an objection as supposed. It has been well said, by a learned writer, that by our own mistakes, or the mistakes of others, we are enabled to learn; and it is certain that it would be well for students to treat every proposition placed before them as erroneous until they have satisfied themselves to the contrary. No doubt this is a laborious process, but can there be any real learning without labour? Is it enough to be able to repeat a few propositions enunciated by text writers, or learned judges, without being able to give reasons for them? To the idle student it may be very acceptable to have correct statements placed before him so that he may not be troubled to ascertain which is the real *Simon Pure*, and which is false; but then, this is calculated to spoil rather than to improve the intellect.

It appears to us that many of our correspondents do not sufficiently study the points, and are more anxious to send in a number of answers than to write one or two carefully studied answers. We trust that some improvement will take place in this respect; and nothing is more likely to assist in this than correspondence with others. We have frequently urged this matter on our readers with, however, no, or very little, success; but really it is so important, that we are induced to repeat our advice, and by way of inducement, we beg to state that we shall certainly give a preference to those answers which are stated to be the result of correspondence. We would especially recommend that *joint* answers should be sent where the parties agree in opinion; and where they differ, that the differences should be referred to, and reasons given. This would be serviceable to the correspondents, and also for our readers, and we therefore very earnestly urge the adoption of correspondence. We presume that any gentlemen whose name is down in either list will be willing to receive and answer communications from any other whose name is in the same list, and, indeed, this was an understood matter with the original correspondents, and we see no reason why it should not be so with the new correspondents. We now close for the present, but shall shortly return to the subject, which is really one of more importance to our readers than they may have hitherto supposed.

Course of Law Studies:

It will be in the recollection of our readers, that sometime since we commenced a series of papers (*ante*, pp. 1—9, 66—70) on the Studies of Articled Clerks, in which we chiefly insisted on two points—namely: 1. That it was impossible to furnish a single plan or course of study which should be suitable for every student, but that the best thing that could be done would be to publish the various courses of study which have been framed by different persons; and we promised to accomplish this at some future time. 2. That, in lieu of taking up Blackstone's or Stephen's Commentaries the student should commence with some of the works referred to at pp. 68, 69, and that it would be still better if the student were furnished with previous outlines of the works, calling his attention to the leading doctrines of each principal subject-matter. We find that, on commencing a new volume, we shall be in a position to make such arrangements as will enable us to commence, and, we hope, carry through, these two proposals; and by so doing we are certain we shall be considerably benefitting every student. To accomplish this it will be necessary to abandon, for the present, the "PROPOSITIONS," which, however, are so far complete in themselves, and may be bound separately, or at the end of this volume.

We may, by way of fuller explanation of our views, state, that it is proposed, with respect to the first of the above proposals, to reprint, with alterations and additions, some good works which have appeared on the subject of Law Studies, and among these we may mention "Buckland's Letters to an Attorney's Clerk;" "Phillips' Letter from a Grandfather to a Grandson, an Articled Clerk;" "North's Discourse on the Study of the Laws;" "Hoffman's Legal Studies;" "Bridgman's Reflections;" "Fulbeck's Preparative to the Study of the Law;" Simpson, &c., on the Study of the Law; with shorter pieces by Lord Hale, C.J., Reeves, Lord Mansfield, Lord Ashburton, &c. &c. By these means we shall be able to accomplish what we before stated to be a desideratum—that is, furnish the student with a variety of views as to the proper course of study to be pursued, and from which the reader will be able to choose those portions which seem most suitable to him, either from his position or his capacity. We may observe, that some of the works referred to were expressly written for students for the bar, or even full-fledged barristers, and it may be thought, therefore, that those directions cannot be available for articled clerks. But this would be to form quite an erroneous opinion, as might be proved in a variety of ways. Confining ourselves only to the most obvious, we may observe, that solicitors now have to play the parts of advocates in the county courts, the police courts, the bankruptcy courts, &c., and for such purposes they ought to be qualified in the same manner as barristers. In many other respects too, solicitors approximate to barristers and within the last twenty years their status has been considerably raised, and con-

sequently their qualifications require a corresponding elevation. As we stated nearly fifteen years ago, on our first outset, a solicitor should, in order to be fully qualified, go through the same course of study as is suitable for a barrister. We are aware that in point of fact this is rarely possible, but the *spirit* of it should be always looked too: a student cannot aim too high. Thus, then, many portions of the works referred to, written for students for the bar, would not, twenty-five years ago, have been applicable to articled clerks, but now they are, at least, to some extent, suitable to such students. We shall, of course, have to make considerable alterations in the lists of books recommended for study, but the most useful part of the works will be as applicable now as when first written—that is, what relates to the *method* of study.

With respect to the second of the above proposals—there can be no doubt of its suitability for articled clerks, being expressly framed for them. The first series will point out some of the works considered the most proper for the student, besides those noticed *ante*, pp. 68, 69, and this second series will furnish an outline of each work so recommended, with a view (1) to the reader satisfying himself whether the work will be suitable to him; (2) to give such an outline of the principal contents of the volume as shall *materially assist* in its subsequent perusal, or shall, as the reader may think proper, enable him to dispense with the perusal of some such works. These are important aims, and will we hope be fully accomplished by us. It must be understood, that we do not purpose to supersede the perusal of the works, and that we shall not trespass on the rights of the authors; indeed, we consider that the latter will owe us thanks for directing attention to their works. It is intended to place before the student, in a prominent manner, the most important of the propositions contained in the several works, and to illustrate them in a familiar way, so that the student, on a subsequent perusal of such works, will feel his path much smoothed, and be better able to understand the author. It is the want of this preliminary knowledge which makes progress so slow and so little satisfactory. It will be understood, that we shall commence with the more elementary works, being such as are suitable to younger articled clerks (see *ante*, pp. 68, 69); but afterwards we shall proceed to such as are of a more practical nature. In fact, the system seems to us so excellent, that we feel sorry we shall be confined to such narrow limits, though, if our readers should approve of it as much as we think it merits, we might be induced to adopt it more extensively, and so proceed more rapidly.

We propose to commence the first series with the next Number, and to continue the same from month to month until sufficient shall have been produced to supply the wants of our readers, and then to take up and proceed with a second series.

THE STATE OF THE LAW.

At the last annual meeting of the Social Science Association, much was said by various persons as to the state of the law, and the necessity for further reforms. It is not our purpose to notice this in *extenso*, but we cannot forbear giving a short abstract of the address of Vice-Chancellor Wood in opening the department of jurisprudence. He observes, that he took it for granted that the principles of morals, of right and wrong, had been in these days ascertained and established so far as human infirmity was able to do so. Taking this for granted, the science of jurisprudence might be described as that which deliberated on those portions of right and duty with reference to the social position of man which it was requisite to protect by legislation. The question was, where was the proper line of separation which distinguished between what was moral and individual duty, and what they were called on to enforce by law? This was the great difficulty of the question, and could only be well discussed by taking up the past history of our jurisprudence. He combatted the popular idea that lawyers were, as a body, opposed to the reform of the law, and contended that from the earliest times the judges of the land had been ahead of the public at large in the efforts to remedy the defects of our jurisprudence. The feudal law respecting the tenure of land had been reformed chiefly by the effort of the judges, and it was through Lord Mansfield that our mercantile law had been improved, in opposition to the opinions of the people themselves. After referring to the celebrated speech of Lord Brougham on law reform, more than thirty years ago, and the vast improvements which have taken place since that period, the learned Vice-Chancellor next took up the subject of international law, which was intimately connected, he said, with the civilisation of mankind. Our commercial and international relations embraced a wide field—the question of decimal coins, weights and measures, a uniform copyright, the delivering up of criminals, and the respect due to the religious opinions of foreign countries, besides the great and important questions relating to the rights of neutrals in time of war. Next came our national and domestic legislation. He would not touch on Parliamentary reform, as he thought they should adhere closely to their plan as a scientific institution, and not introduce subjects on which party passion and feelings were likely to be brought to bear; otherwise the society would be shipwrecked. He defended the Statute of Law Commissioners, and observed that that learned body could not be expected to do more than indicate a course to be pursued, not to complete a work. They had, however, made a digest of all the statutes from 1760 downwards, pointing out which of them had been repealed or altered, a labour of very great importance indeed in connexion with the consolidation of the law. He next pointed out the necessity that exists for reforms in reference to private bill legislation. After referring to various law reforms that had taken place of late years, the learned Vice-Chancellor spoke of that portion of the law which affects our own rights and duties as citizens. This part part of the subject included corporations;

and he reminded his audience that had such institutions existed in France or Russia, those sweeping changes which had taken place without a single public meeting of the people taking place could not have occurred in the way they had done. The next point was the private rights and duties of citizens; and under this head he dwelt on the important relations of husband and wife, guardian and child, &c., and observed that the association would do well to turn its attention to improvements of the law in these respects especially to the condition of wards in Chancery. Then there was the law affecting real property, which was in a very complicated state, and requiring much change. He specified the law affecting the property of bankrupts, and pressed on the association the propriety of agitating for a measure to legislate the registration of land, so as to facilitate its transfer. This would open the way for working men to invest their savings in small plots of land, and thus greatly conduce to the stability and welfare of the nation; while it would be highly advantageous to the present land-owners. The learned judge pointed out some of the late improvements in the Court of Chancery, as well as in the common law courts, and enforced the propriety of a change in the law affecting bankruptcy and insolvency. He also spoke of the importance of establishing a Department of Justice, recommending the appointment of a board similar to those now existing on trade and education, to be presided over by the Lord Chancellor, with a vice-president having a seat in the House of Commons. A higher standard of legal education was also called for, accompanied with examinations in the Inns of Court.

LONDON ATTORNEYS AND THEIR GRIEVANCES.

There is one grievance under which London solicitors labour as compared with their provincial brethren, which fairly calls for amendment and redress. Metropolitan attorneys, it appears, are prohibited from acting as commissioners for taking oaths in Chancery, unless they have been ten years admitted, whereas provincial attorneys are under no such restriction, but are allowed to act as commissioners as soon as they are admitted. The distinction thus made, so palpably unjust, affects the entire body of attorneys in London, more than three thousand in number, and the grievance in question is consequently one of considerable magnitude. For this anomaly they are stated to be indebted to certain regulations issued by Lord Cranworth, when Lord Chancellor; and naturally enough, under such circumstances, an agitation has been got up with a view to its removal. The influence of the Incorporated Law Society is asserted to have been exerted adversely to the interests of the London solicitors, when the obnoxious distinction was originally made, and the feeling thereby created is anything but favourable to that body so far as relates to their conduct on this question. No good reason, we are assured, can be adduced for the privilege conferred on country attorneys, to the prejudice of their profes-

sional brethren in the metropolis. An act of injustice towards the latter has clearly been perpetrated, which demands a prompt and effectual remedy. We are glad, therefore to perceive that steps are being taken, by means of a bill which is to be introduced next session, to abolish so obnoxious a distinction, and place the legal profession in London on the same footing as provincial solicitors, so far as regards their power to act as commissioners for taking oaths in Chancery, without the obnoxious condition of ten years' admission being insisted upon as a preliminary to the exercise of that privilege.

Notices of New Books.

HUNTER'S LAW OF PROPERTY ACT.

The Act to amend the Law of Property, and to relieve Trustees (22 & 23 V. c. 35), with Introductions and Practical Notes. By SYLVESTER JOSEPH HUNTER, Barrister-at-Law, author of an *Elementary View of a Suit in Equity*. London: Butterworths. 3s. 6d.

As we have before stated, the act of which Lord St. Leonards was the putative father, and on which Mr. Hunter discourses, effects very great alterations in Real Property Law, and the practitioner and student must make an acquaintance with its provisions, and the sooner and more completely this is done the better. The act applies to a great variety of subjects, and the provisions are so important, and of such continual recurrence in practice, that it may be long before the enactments get into their proper places in the ordinary text-books, and certainly it will be expensive to purchase the books affected thereby. We think, therefore, that the profession should feel obliged to anyone undertaking to furnish them in one volume, with the act and explanatory notes, such as the present work of Mr. Hunter. Having read the work with some attention, we can conscientiously express our approval of the labours of Mr. Hunter; and we recommend all our readers to purchase the volume, and give it a perusal, and we make no doubt that they will find it afford them much valuable assistance in the due understanding of the various provisions of Lord St. Leonards' Act. We regret that we have not space in this number for any extract, but we may find another opportunity hereafter for supplying this omission.

Moot Points.

No. 158.—General Devise—Trust Estates.

A. being seised in fee, mortgaged certain messuages unto B. for £400. B. made his will, whereby he gave, devised, and bequeathed, all his messuages, land, hereditaments, and real estate, also all his money and personal estate whatsoever, unto C. and D. and their heirs, according to the

natures thereof respectively, upon trust to convert his said real estate into money, and invest the same for the benefit of his wife.

A., the mortgagor, sells the property, but the purchaser's solicitor objects to the title on the ground that the devise to C. and D. was not sufficient to pass the testator's mortgage estates, and, consequently, the heir-at-law (who is now in America) would have to join in the conveyance.

The *quære* is, will a general devise (such as the above) pass mortgage estates? The mooter maintains that it will (*vide* Hill on Trustees, p. 270). He would be glad of the opinion of correspondents with reference to authorities. J. H.

No. 159.—*Injury done in consequence of Negligence and Carelessness of Servant—Liability of.*

A. is the servant man of B. A. drives B. to town in a dog-cart. B. leaves A. in charge of the horse, telling him he would return in ten minutes, and that he must not leave the horse on any account. When B. left, A. went over the way to a public-house, when the horse ran away and severely injured C., from which C. died. Who is the person to be sued by the representatives of C. J. H.

No. 160.—*Dower.*

A. being married, purchases freeholds before 1834, with uses to bar dower. His wife dies. He marries again after 1834, and dies intestate. Is the widow entitled to dower out of this freehold? E. H.

No. 161.—*Notice to Quit—Double Rent.*

B. holds over. A. gives him notice in the middle of the quarter to quit or pay "double value," at the expiration of this (the first) quarter of the holding over. How much is A. entitled to sue for, assuming the late rent to have been £16 per annum? E. H.

No. 162.—*Descent—"Person last Entitled."*

If A. *devises* land to B. (a stranger in blood), and B. dies without heirs, does the property revert to the heirs of A., as being the "person last entitled," under sec. 19 of 22 & 23 V. c. 35? *Quære*, the same If A. had *sold* to B? E. H.

No. 163.—

If A.'s husband dies suddenly on the 1st of January, 1859, and A. marries again on 1st of February, and has a child born on the 1st of September, which husband is in law the father of the child, so as to make the child his heir? E. H.

No. 164.—*Indorsement on writ—Undertaking.*

A., on being sued by B., induced C. to give an undertaking for payment of the debt, which he fails to carry out. In an action against C., ought a copy of the undertaking to be indorsed on the writ? A. K. R.

No. 165.—*Equitable Mortgage of Leaseholds—Liability.*

Is an equitable mortgage of a lease, deposited to secure a debt, liable to the covenants contained in it, if he do not take possession? A. K. R.

No. 166.—*Highway—Obstruction.*

A. was summoned under sec. 78 of the 5 & 6 W. 4, c. 50, for leaving his horse and cart upon a certain highway in the parish of ———, so as to obstruct the passage thereof. The only evidence which could be adduced on the hearing was, that of a police constable, who deposed that the defendant's horse and cart stood opposite a public house upon the said highway for an unreasonable space of time, namely, one hour and thirty minutes, which was not denied, but so far from there being any proof of obstruction, it was admitted by the complainant himself, that two carts, or other vehicles, might have passed one another alongside the cart which was charged, in the information, as causing the obstruction.

Opinions are requested whether, under the above section of the statute, evidence of actual obstruction is or is not required to justify magistrates in convicting a defendant thereunder, or whether he incurs the penalty by leaving a vehicle upon the highway, as was done in the above case, for an unreasonable space of time, but without, however, causing any obstruction.

Also, could the defendant have been convicted, under the same section, for "negligently, and wilfully being at such a distance from the carriage that he could not have the government of the horses drawing the same," it being proved that the defendant was in the public house near to which his cart was standing?

FIAT JUSTITIA.

No. 167.—*Public Institution.*

A society, of an unlimited number of persons, is formed for the attainment of a legitimate object. It is governed by its own laws, and managed by officers selected annually by, and from the members. Its proceedings are constantly made public through the newspapers: and the public are, in fact, *permitted* to see them; although it is not contended that they have any *right* whatever to do so.

No person can become a member except through the introduction of a duly elected member.

Does such a society constitute in the eye of the law a "public institution."

W. M. SHERRING.

Answers to Moot Points.

No. 134.—*Claim to Barony (ante, p. 384).*

The first thing necessary to be done with a view of claiming this barony, will be to prepare a pedigree and show, by extracts from the parish register, or other documentary evidence, that the claimant is a lineal descendant of the last baron. Then a petition should be presented to the Crown by the claimant, accompanied by the pedigree and documents in verification of it. The petition should set forth all the circumstances, so far as known, respecting the creation of the barony, the death of the last baron, the reasons for any previous non-claim, and the facts in proof of the claimant's title.

F. A. C.

No. 136.—*Devise—Copyholds, &c.* (*ante*, p. 381).

I think there can be no doubt but that the trustees under the will of A. can make a good title to a purchaser of the devised lands. For by 4 & 5 V. c. 35 (an act for enabling lords and tenants of manors to effect enfranchisements of their lands), it is enacted, that after enfranchisement, the lands will become in all respects of freehold tenure; but "such conversion into freehold shall not effect any mortgage, or defeat the beneficial limitations of any will or settlement theretofore executed."

Since the codicil makes no mention either of the copyholds or the enfranchisement, I do not think it will interfere with the disposition of the property.

A. K. R.

No. 137.—*Foreign Contract* (*ante*, p. 381).

I agree with J. W. that, under the circumstances, the agreement could not be safely acted on. In the cases of *S. P. Clegg v. Levy* (3 Camp. 166); *Alves v. Hodgon* (7 T. R. 241); and *Snath v. Mingay* (1 M. & S. 87), it seems to have been held, that an agreement made in a foreign country cannot be used here, if it appear a requisite of the laws of that country has not been complied with. And also, by *De la Vega v. Vianna* (1 B. & Ad. 284), it is decided, that such a contract is to be interpreted according to the foreign law although the remedy must be taken according to the law here. If in the present case, then, the contract be interpreted according to the law of France, it will be found wanting, inasmuch as the French requisites are not complied with, and I therefore think it cannot be enforced.

A. K. R.

No. 138.—*Agreement to Recover Property* (*ante*, p. 381).

The agreement would, in my opinion, be void; because the consideration is, on the face of it, illegal. Agreements to furnish money, or to aid in the prosecution of law suits, in which the party making the agreement is in nowise interested, and in which he has no just or reasonable ground for interference, are, by 32 Hen. 8, c. 9, in affirmance of the common law (Plowd. 88,) void, as tending to promote litigation. But if B. (and as to this the point is defective) has any interest in the recovery of the £30,000, the agreement will be lawful (2 Roll. Abr. 115; *Findon v. Parker*, 11 M. & W. 682). But, assuming that this is not the case, the agreement is absolutely void, and would render B. liable to an indictment for champerty, or maintenance, both of which are misdemeanors punishable by fine and imprisonment.

As to the second, part of the question—viz., What is a better mode of accomplishing the objects in view? it depends so much upon circumstances of which no judgment can be formed from the point, that I think it better not to hazard an opinion.

A. K. R.

No. 139.—*Devise—Trust* (*ante*, p. 382)

I think the evident intention of the testator, conveyed by the words of the will is, that A. should have the whole of the residue, subject to the trust as to one moiety in favour of E., his heirs, &c. In fact, I think it is

the only construction the words will bear. F. F. says that no mention is made of the "other" moiety but to me such appears unnecessary, since it has already been given to A., and this further confirms my view of the subject.

A. K. R.

No. 140.—*Grant of Annuity—Registry* (*ante*, p. 382).

By several statutes of Geo. 2 and Anne, all deeds, &c., conveying estates within certain counties are directed to be registered. If two deeds be executed bearing different dates, that which is first registered has priority both in law and equity, although it be posterior in date and execution (*M'Neill v. Cahill*, 2 Bligh, 228). On this authority, I think that the deed executed by A. in 1722 is invalid as against a subsequent registered conveyance; but it must be remembered that the object of registry acts is only to protect subsequent purchasers, and that they have no effect to vitiate the conveyance as between the immediate parties to it (*Jones v. Gibbon*, 9 Ves. 407). It has been decided, however, that a grantee under a subsequent registered conveyance, *with notice of a prior unregistered one*, shall obtain no advantage from the act of registration (*Blades v. Blades*, 1 Eq. Ab. 358; *Chivall v. Nicholls*, Str. 664; *Lord Forbes v. Nelson*, 2 Bro. P. C. 425, &c.). I am of opinion that A.'s deed is invalid against a purchaser without notice (*Wyatt v. Barwell*, 19 Ves. 435), and that registry by the grantee would not now render it valid (*M'Neill v. Cahill*, *ante*).

A. K. R.

No. 144.—*Assignee—Covenant to pay Rent, &c.* (*ante*, p. 89).

The assignee of an assignee is liable, *although he has not taken actual possession*, for breaches of covenant happening after the assignment to him (*Taylor v. Shum*, 1 Bos. & Pul. 21), and an assignee is liable only whilst he is possessed in law, and as by the assignment he disposes himself of the legal estate, he thereby gets rid of his liability to the covenants, both at law and in equity (*Vallant v. Dodmede*, 2 Atk. 546; *Pitcher v. Tovey*, 12 Mod. 23; *Likeaux v. Nash*, 2 Stra. 1221; *Walker v. Reeves*, 2 Dougl. 461 n.). In *Chancellor v. Poole*, too, it was decided that the assignee of a term declared against as such, is not liable for rent accruing after he has assigned over (2 Dougl. 764), or in other words, after he has executed the assignment.

A. K. R.

No. 145.—*Indictment—Assault, &c.* (*ante*, p. 383).

On an indictment for an assault with intent, evidence that the prisoner had taken liberties on a prior occasion would not be receivable in order to prove his intent (*vide Archb. Crim. Plead. & Evid.*, C. C., by Jervis, 8th ed.; and *Rex v. Lloyd*, 7 Car. & Pay. Rep. p. 318).

P. I. W.

No. 145.—*Indictment—Assault, &c.* (*ante*, p. 383).

It is not allowable, upon the trial of an indictment, to show that the prisoner has a disposition to commit the same kind of offence as that for which he stands indicted. Upon an indictment for an infamous crime, an admission by the defendant that he has committed such offence at any other time with another person, and had a tendency to such practices, ought not to be received (*vide Welsby's Criminal Law*, 14th ed. p. 190, and cases there cited).

C. R.

No. 146.—*Registration—Objection to Vote* (ante, p. 383).

I consider that the decision of the Revising Barrister is quite correct. The question in such a case is not whether the claimant has *actually received* to an amount entitling him to be placed on the register, but whether he is *entitled to receive* such an amount.

F. A. C.

No. 149.—*Failure of Bank* (ante, p. 383).

Presuming that B., gave no authority to M. to place the money in the bank, I consider the latter liable to restore the amount to B., especially as M. mixed it with moneys of his own.

F. A. C.

No. 151.—*Costs of Covenant to Produce* (ante, p. 384).

I have not been able to find any precise authority on this point; but the law seems to be, that the person requiring any special act to be done (except such as may relate to the mere execution of the conveyance, Dart's V. & P. 463, 3rd ed.), must procure it, and bear the expense of it. If this be so, it will follow that, in the present case, the vendor must prepare the deed of covenant, and bear the expense of it.

CAUSIDICUS.

No. 151.—*Costs of Covenant* (ante, p. 384).

The deed should be paid for by the vendor, and prepared by his solicitor.

E. H.

No. 151.—*Costs of Covenant to Produce* (ante, p. 384).

When the sale is completed, the purchaser is entitled to the original title deeds, and the vendor must bear the expense of entering into a covenant to produce.

SAM. W. TURNER.

No. 151.—*Costs of Covenant to Produce* (ante, p. 384).

The vendor is bound to hand over to the purchaser all deeds relating to the purchase, and if the vendor requires a deed of covenant for their production, it must be at his own expense, and consequently his solicitor would prepare the deed.

E. S.

No. 152.—*Costs of Transfer* (ante, p. 384).

I think not, unless there was a special clause that such expense should be allowed.

E. H.

No. 153.—*Devise on attaining Twenty-one* (ante, p. 384).

The case of *Derner d. Satterthwaite* (1 W. Black. 519) appears to be almost analogous to the one put by T. O. X. It was decided that under a devise to A. for the use of B., till B. attains the age of twenty-one, and then to B. in fee, the fee vests immediately in B. (see also *Goodtitle d. Hayward v. Whitby*, 1 Burr. 228; *Doe d. Wheedon v. Lee*, 3 T. R. 41; *Bromfield v. Crowder* 1 N. R. 313).

A. K. R.

No. 153.—*Devise on attaining Twenty-one—Vested Estate* (ante, p. 384).

As T. O. X. quotes from memory, I suggest whether he has not made some mistake as to the precise import of the report to which he alludes. The executory devise to A. for life, and after his *décès* to his children, on their attaining twenty-one, seems to me to be on the face of it contingent, so far as the children are concerned; for if they should never attain the

age of twenty-one, the estate could never vest in possession, but would, in fact, be extinguished. I cannot conceive on what principle it could be maintained that they took a vested interest on the death of their parent.

CAUSIDICUS.

No. 155.—*Right of Way* (ante, p. 385).

I do not understand what the fact of the land being leasehold, and held under the Archbishop of York, has to do with this point. I should think the right of way may be claimed by prescription, under the 2 & 3 W. 4, c. 71, just as in any other case. It should be recollected, however, that thirty years' enjoyment gives only a sort of negative title. Sixty years is required to make it indefeasible.

CAUSIDICUS.

No. 156.—*Petitioning Creditor's Debts* (ante, p. 385).

No. The petitioning creditor's debt must be one for which, if payable at the time, an action at law could be maintained, and since the plaintiff could be defeated by the defendants pleading the statute, a debt thus barred cannot support a fiat (*Exp. Dawdney*, 15 Ves. jun. 479); but a debtor to a bankrupt, when sued by his assignee, cannot set up the Statute of Limitations as an objection to the petitioning creditor's debt, and thus rid himself of the claim (*Gregory v. Sturrill*, 8 Moo. 189; *Quanlock v. England*, 5 Burr. 2628; 2 W. Black. 703; *Mavor v. Pyne*, 3 Bing. 285). A. K. R.

No. 156.—*Petitioning Creditor's Debt* (ante, p. 385).

Decidedly not (*Archbold's Bankruptcy*, p. 80).

E. H.

No. 157.—*Emblements* (ante, p. 385).

I am of opinion that A., or his representative, would be entitled to the crops. Because neither B. nor C. were at the labour and expense of tilling and sowing the ground; therefore I think, as they were tenants for life only, the crops would revert to A. (*Bissett on Life Estates*, 280, 281, 282).

J. S.

No. 157.—*Emblements* (ante, p. 385).

I am unable to find a case in point, but am of opinion, from what is laid down in the text books, that the right to the crops in this case would revert to the grantor.

C. R.

No. 157.—*Emblements* (ante, p. 385).

Emblements, like other personal property, are subject to the law of occupancy. They are altogether distinct from the real estate in the land, and belong to any possessor of the land who has sown or planted them, whether he be the owner of the inheritance, or of a less estate (2 Bl. Com. 408). By conveying away the land, A. did not lose his property in the emblements, which belong to him by virtue of his having sown them while the land was in his possession.

CAUSIDICUS.

No. 157.—*Emblements* (ante, p. 385).

A. would be entitled as reversioner; but if he had not sown the land, the executor of D. would have been entitled (*Woodfall's Landlord & Tenant*, 493, 494).

E. H.

No. 158.—*General Devise—Trust Estates* (*ante*, p. 398).

In this case, I am of opinion, the heir at law of the mortgagee should concur in the purchaser's conveyance. In the absence of any words shewing an intention by the testator to include trust or mortgage estates in the devise, and the real estate being devised upon trust for sale, there appears to me to be too much doubt on the point to require the purchaser to dispense with the concurrence of the heir at law. Had there been a simple general devise *without any use or trust appended*, then undoubtedly the trust estates would have passed (see *Baring v. Booth*, 1 L. J. (N. S) Ch. 204; *Braybrooke v. Inakip*, 8 Ves. 417).

F. A. C.

No. 159.—*Injury done in consequence of Negligence of Servant—Liability of* (*ante*, p. 398).

Both A. and B. are separately liable, but as B. is the most substantial object for an action, I should sue him, as under the circumstances stated in the Moot Point, he is unquestionably liable for the negligence of his servant.

F. A. C.

No. 160.—*Dower* (*ante*, p. 398).

The case of *Fry v. Noble* (24 L. J., N. S., Ch.) decides that where freeholds are conveyed to a woman to bar dower previous to 1834, the widow of the purchaser, married subsequent to that period, is entitled to dower, unless her right is otherwise barred. The case cited is exactly similar to that mentioned in the Moot Point.

F. A. C.

No. 161.—*Notice to Quit—Double Rent* (*ante*, p. 398).

In the case of *Cutting v. Derby* (2. Blac. Rep. 1075,) *Cobb v. Stoker*, (8 East, 358), it was decided will be entitled to double rent from the time of giving notice only. How much A is entitled to sue for depends on the time stated in the notice when possession was required, or when he intended the double rent to commence. If the notice required immediate possession, then the double rent would be calculated after the rate of £32 per year, from the day after the service of the notice to the day possession was given up, or action brought.

F. A. C.

No. 162.—*Descent—Person last Entitled* (*ante*, p. 398).

If the devise to B. took effect, then, in the absence of heirs to B., the property, if freehold, escheats to the Crown; if copyhold, to the Lord of the Manor. Sec. 19 of 22 & 23 Vic. c. 35 does not apply. That section was introduced into the act to meet a difficulty arising under 3 & 4 W. 4, c. 106, where it is proved that the person last seized was not the purchaser.

F. A. C.

No. 163.—*Heirship* (*ante*, p. 398).

The solution of the difficulty mentioned in this Moot Point can be solved by the medical man or midwife who was present at the birth of the child, if notice was taken whether it had arrived at maturity. The child was born seven months after A.'s second marriage. A seven months' child is easily distinguishable by a surgeon from a nine months' child. If the child was a nine months' child, he or she would, in law, be heir to the first husband.

F. A. C.









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